

Provincial Legislation Affecting Conservation in British Columbia

With a Focus on Southern Mountain Caribou (2021)

The following review was conducted in 2021 as work on the Great Caribou Rainforest Conservation Area began. It was compiled by researchers with legal training and it was reviewed in 2025 to confirm it remains relevant. However, the following should not be misconstrued as legal advice, its use is at the sole discretion of the user.

I. RESEARCH GOAL

To compile a list of the primary BC provincial legislation that might advance or impede efforts to create a caribou conservation area in east-central British Columbia, with a brief overview of each piece of legislation, including the purposes of the legislation.

II. SUMMARY AND OVERALL COMMENTS

The provincial legislation discussed below can be roughly divided into two categories:

- 1) Legislation that allows the provincial government to set aside areas of land where it prohibits some or all industrial and other activities potentially harmful to caribou or their habitat; and,
- 2) Legislation that allows the provincial government to grant tenures or operational permits for activities that are likely to harm caribou or their habitat.

The first category could generally advance efforts to create a caribou conservation area, by allowing the government to establish fully or partially-protected areas that in turn protect caribou and their habitat. The second category could generally impede efforts to create a conservation area, by enabling activities harmful to caribou and by creating potential obligations for government to compensate industry or others whose projects or activities are curtailed by creation of a new protected area.

Protected areas fall along a spectrum in terms of the strength of protection they offer against activities likely to harm caribou. At the strongest end of the spectrum are protected areas established under the *Protected Areas of British Columbia Act*, the *Park Act* and the *Ecological Reserve Act*. These laws generally prohibit most or all activities likely to harm caribou and caribou habitat. In the middle of the spectrum are partially-protected areas created through various natural resource laws – for example wildlife habitat areas (WHAs) or ungulate winter ranges (UWRs) established or recognized under BC forestry laws and oil and gas laws. These areas provided at least some protection against some (but not all) activities likely to harm caribou and habitat. At the lowest end of the spectrum are weakly-protected areas created through some

natural resource laws or through the *Land Act* – for example old growth management areas (OGMAs). These areas provide poor protection against most activities that could harm caribou and habitat.

The BC Supreme Court included a helpful chart rating the effectiveness of provincial “protected” areas in a recent case brought by the Blueberry River First Nations. The chart rated effectiveness based on the strength of legal protections and the history of industrial incursions (i.e. based on how often the province typically allows exemptions to any claimed protections).[1] The chart was based on a report commissioned by the province with respect to protections for southern mountain caribou, though the BC Supreme Court endorsed it as a reliable general critique of provincial “protected” areas:

- a) Ecological Reserves: High, given the strong rules and good history of application;
- b) Class A Provincial Parks: Moderate to high, given strong rules (though the report notes that 10,299 ha of oil and gas activity had still been authorized in class A parks in the Narraway/Pine River/Quintette Local Population Unit study area);
- c) Protected Areas: Moderate, due to generally strong rules, excepting the allowance of motorized recreation and linear disturbances;
- d) Wildlife Habitat Areas and Ungulate Winter Ranges: Low to low/moderate (depending on whether a Conditional Harvest or No Harvest designation), given the high number of documented incursions into these zones as allowed by the “if practicable” and “material adverse effects” tests. The low rating is also a result of the limited subset of industrial activities to which these designations apply;
- e) Old Growth Management Areas: Low, as they apply only to forestry, oil and gas activity (and not other industrial activity), and because they allow discretionary destruction of habitat; and,
- f) Resource Review Areas: Moderate to high, as they have the potential to limit future expansion of oil and gas tenure.

Although not discussed below (because it does not generally relate to existing BC legislation), Indigenous Protected and Conserved Areas (IPCAs) also offer a useful potential path forward. IPCAs are areas where Indigenous governments have the primary role in protecting and restoring ecosystems through Indigenous laws, governance and knowledge systems. IPCAs can either be established unilaterally, by declaration of the relevant First Nation, or in collaboration with the federal or provincial government. An IPCA could provide strong protection to caribou and their habitat, particularly if provincial or federal laws or agreements aid in the enforceability of the prohibitions that apply in the IPCA.

III. DETAILED FINDINGS

The two charts below set out the findings of the review: one that shows a list of laws that could advance efforts to conserve caribou, and one that shows a (somewhat overlapping) list of laws that could impede efforts to conserve caribou. This is followed by a more-detailed narrative description of each piece of legislation listed in the two charts, organized by subject matter and by the name of the relevant Act or regulation.

Chart #1 – BC legislation that could advance efforts to conserve caribou (by prohibiting activities that are likely to harm caribou or caribou habitat)

Conservation designation	Relevant BC legislation (Acts and regulations)
Class A-C Provincial Park	<i>Protected Areas of British Columbia Act</i> <i>Park Act</i>
Ecological Reserve	<i>Ecological Reserve Act</i> (and regulations)
Protected Area	<i>Environment and Land Use Act</i>
Wildlife Habitat Area (WHA) or Ungulate Winter Range (UWR)	<i>Forest Act</i> <i>Forest and Range Practices Act</i> <i>Forest Planning and Practices Regulation</i> <i>Woodlot Licence Planning and Practices Regulation</i> <i>Government Actions Regulation</i> <i>Oil and Gas Activities Act</i> <i>Environmental Protection and Management Regulation</i>

<p>Old Growth Management Area (OGMA)</p>	<p><i>Land Act</i></p> <p><i>Forest Act</i></p> <p><i>Forest and Range Practices Act</i></p> <p><i>Forest Planning and Practices Regulation</i></p> <p><i>Oil and Gas Activities Act</i></p> <p><i>Environmental Protection and Management Regulation</i></p>
<p>FPPR Section 7 and WLPPR Section 9 Notice Area</p>	<p><i>Forest and Range Practices Act</i></p> <p><i>Forest Planning and Practices Regulation</i></p> <p><i>Woodlot Licence Planning and Practices Regulation</i></p>
<p>Resource Review Area</p>	<p><i>Petroleum and Natural Gas Act</i></p> <p><i>Oil and Gas Activities Act</i></p>
<p>Petroleum and Natural Gas Act s. 72 Reserve Area</p>	<p><i>Petroleum and Natural Gas Act</i></p> <p><i>Oil and Gas Activities Act</i></p>
<p>Section 15 OIC Reserve Section 16 Withdrawal Section 17 Conditional Withdrawal</p>	<p><i>Land Act</i></p>
<p>No Registration Reserve (Mineral or Placer)</p>	<p><i>Mineral Tenure Act</i></p> <p><i>Mines Act</i></p>
<p>Coal Land Reserve</p>	<p><i>Coal Act</i></p> <p><i>Mines Act</i></p>

Motor Vehicle or Public Access Prohibition	<i>Wildlife Act</i> <i>Motor Vehicle Prohibition Regulation</i> <i>Public Access Prohibition Regulation</i>
Reviewable Projects	<i>Environmental Assessment Act</i>

Chart #2 – BC legislation that could impede efforts to conserve caribou (by enabling activities or projects that are likely to harm caribou or caribou habitat)

Description of activity likely to harm caribou	Relevant BC legislation (Acts and regulations)
Forestry – cutblocks and roads	<i>Forest Act</i> <i>Forest and Range Planning Act (and regs)</i>
Oil and gas development, including seismic lines, pipelines, and related roads	<i>Petroleum and Natural Gas Act</i> <i>Oil and Gas Activities Act (and regs)</i>
Mining development (mineral tenures and development, coal tenures and development)	<i>Mineral Tenure Act</i> <i>Mines Act</i> <i>Coal Act</i> <i>Mining Right of Way Act</i>
Power development (hydroelectric corridors, roads)	<i>Hydro Power Authority Act</i> <i>Land Act</i>
Heli-skiing and Heli-hiking	<i>Land Act</i>

Snowmobiling/Off Road Motor Vehicle	<i>Wildlife Act</i> <i>Motor Vehicle Prohibition Regulation</i> <i>Public Access Prohibition Regulation</i> <i>Off Road Vehicle Act</i> <i>Off Road Vehicle Regulation</i>
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DETAILED DESCRIPTION OF RELEVANT LEGISLATION (BY SUBJECT AREA)

Protected Areas

Protected Areas of British Columbia Act: This Act establishes a system to provide for the protection and maintenance of natural and cultural areas, as well as outdoor recreation opportunities. Protected areas under this Act include ecological reserves, provincial parks, conservancies, recreation areas and protected areas under the *Environment and Land Use Act*. It also consolidates in its schedules most of the Class A parks, conservancies, and ecological reserves for the purposes of the *Park Act* and the *Ecological Reserve Act*. It contains no provisions for the regulation of land use. The Act ensures that the boundaries of these areas cannot be modified to remove lands except by an Act of the Legislature.

- As noted above, this Act could generally advance efforts to create a caribou conservation area, by allowing the government to set aside a strong protected area that prohibits most or all activities likely to harm caribou and their habitat.

Park Act: Provides for the establishment, classification and management of parks, conservancies, and recreation areas. The *Park Act* prohibits most non-recreational activities without a permit, and states that generally, permits shall not be issued “unless necessary to preserve or maintain the recreational values of the park.” Under the *Park Act*, there are three classes of parks: Class A, B and C. Class A parks and conservancies are established by inclusion in the schedules to the *Protected Areas of British Columbia Act* or by order in council under the *Park Act*. A Class B park may permit a broader range of activities and uses than a Class A park, provided that such uses are not detrimental to the recreational values of the park. Class C parks must be managed by a local board appointed by the minister. Within parks, a drilling licence, permit, lease, or other right may be issued under the *Petroleum and Natural Gas Act*, or permits may be issued under the *Oil and Gas Activities Act* – however, this may only occur if the authorization does not “permit, authorize or allow entry on or occupation, use or disturbance of the surface of land within the park.”

- While the *Park Act* would generally be helpful in advancing efforts to create a caribou conservation area, there is broad discretion in the Act for the issuance of permits for research activities, which can include research related to environmental assessments (EAs), feasibility studies (e.g., for roads and pipelines), and to inform decisions around park boundary adjustments. However, policy related to the issuance of research permits recommends the permit be denied if the research activity will result in adverse impacts, which are impacts that will impair the function or role of a protected area.
- Requirements attached to drilling licences and related oil and gas rights could advance caribou conservation. Avoiding surface disturbance would likely prevent destruction of critical caribou habitat.

Ecological Reserve Act: Ecological reserves are created through the *Ecological Reserve Act*, which reserves land from further disposition under any other Act, explicitly including the following Acts that have the potential to impact a caribou conservation area: *Coal Act*, *Forest Act*, *Land Act*, *Mineral Tenure Act*, *Mining Right of Way Act*, and *Petroleum and Natural Gas Act*. The *Ecological Reserve Act* makes it an offence to violate the *Ecological Reserve Regulations*.

Ecological Reserve Regulations: The *Ecological Reserve Act Regulations* identify activities that are inappropriate in an ecological reserve. Inappropriate activities include prospecting for minerals, cutting timber, building roads or trails, allowing domesticated animals to graze, camping, lighting fires, trapping animals, and using motorized vehicles.

- These regulations and the related Act could advance caribou conservation, by allowing government to set aside a strong protected area. The activities likely to affect caribou or their critical habitat are prohibited in these areas and permits may only be issued for ecological scientific research or educational purposes.

Environment and Land Use Act: This Act empowers a Land Use Committee of the provincial Cabinet to ensure all aspects of the preservation and maintenance of the natural environment are fully considered in the administration of land use and resource development. Protected areas can be created under the Act and must be designated by Order in Council. The Act is flexible, so various activities can be specified as being regulated, prohibited, or allowed in a protected area. This is typically done by order, or in a management or policy statement.

- This Act could help advance caribou conservation, though the strengths of any protected area created under the legislation depend on the details of which activities are prohibited or regulated.

Land Act: The *Land Act* is the primary legislation the government uses to convey land to the public for community, industrial and business use. The Act allows the government to grant land and issue Crown land tenures in the form of leases, licences, permits and rights-of-way. Under the *Land Act*, reserves can be created through an order in council (OIC). Reserves are legal designations under sections 15, 16 and 17 of the *Land Act* that may be placed on Crown land as a means of preventing or restricting the disposition of the land due to an acknowledged value or concern in the public interest. Within section 15 OIC reserves, the minister has discretion to authorize temporary licences for less than two years for a variety of activities, and to authorize construction of roads. Activities may be authorized within an area designated under a section 15 reserve if they are for the purpose for which the area was designated.

- *Land Act* section 15, 16 and 17 reserves could help advance caribou conservation. Though, in some situations, section 15 authorizations could allow activities with the potential to result in destruction of critical habitat. The terms and conditions associated with each of the designated areas would have to be reviewed on a case-by-case basis to determine the extent of the risk, and whether section 15 authorizations help or hinder caribou conservation.

Forestry

Forest Act: The *Forest Act* is one of two key statutes regulating forest resources in BC, the other being the *Forest and Range Practices Act*. The main purpose of the *Forest Act* is the administration of Crown timber resources. The Act creates administrative units (timber supply areas and tree farm licences) for which the Chief Forester determines annual allowable cuts – the amount of timber that licensees can harvest each year in the relevant area. The Act describes different forms of timber harvesting rights, or forest tenures, that the province can grant. A tenure-holder’s rights and obligations are set out in part in the licence document and in part in the Act and its regulations.

- This legislation could hinder efforts to create a new caribou conservation area. Forest licence holders with rights to cut timber or build roads in the proposed conservation area could be entitled to compensation if their rights are affected. Further, removing areas from the timber harvesting land base for caribou conservation could increase logging pressures elsewhere in the relevant timber supply area(s) or in the area covered by any affected tree farm licences. This could lead to greater impacts on any caribou in those areas.

Forest and Range Practices Act (FRPA): FRPA and related regulations make up the core of the province’s regulatory scheme governing forest practices on Crown lands. The government provides direction to forest tenure-holders by setting overall “objectives”, which is often done through the *Government Actions Regulation* (described below); the province has also established specific forest practice requirements, which are generally set out in the *Forest Planning and*

Practices Regulation (described below). Under FRPA, most tenure holders are required to produce a “forest stewardship plan” (FSP) that describes how they will meet objectives set by the government when conducting forestry operations over a five year period (this can be extended for up to an additional five years). The FSP is now essentially the only government approval a licensee needs to conduct forest operations.

Forest Planning and Practices Regulation (FPPR): The FPPR sets out the key practice requirements that most forest licensees must follow when conducting logging operations or building roads related to forestry operations in BC. Under section 7 of the FPPR, the government can give notice to relevant licensees that they must specify results or strategies in their forest stewardship plans (FSP) to conserve sufficient wildlife habitat for a species at risk or for the winter survival of specified ungulate species (section 9 of the *Woodlot Licence Planning and Practices Regulation*, described below, contains a similar provision for woodlot licence holders). There is no requirement for licensees to conserve habitat for species at risk or ungulates unless they receive specific notice from the government at least four months before the licensee submits an FSP (or woodlot plan) for approval.

Woodlot Licence Planning and Practices Regulation: This regulation sets out the rules that must be followed by woodlot licence holders, or those carrying out activities in relation to a woodlot or a road to a woodlot.

Government Actions Regulation (GAR): The GAR is one of the primary means the province uses to establish objectives that forest licensees must meet when conducting forest operations. Licensees’ strategies for meeting these objectives are set out in forest stewardship plans, or FSPs.

· This legislation could advance efforts to conserve caribou because it allows the government to create Wildlife Habitat Areas (WHAs) and Ungulate Winter Ranges (UWRs), both of which create some limits on timber harvesting and road building in the relevant area. However, under FRPA, the FPPR and the GAR, government actions to protect at-risk species and other wildlife cannot “unduly affect” the amount of timber available to forest licensees – current government policy has generally interpreted this to mean that areas set aside for WHAs, UWRs and other measures to protect “identified wildlife” cannot have more than a 1-4% effect on short and long-term harvest levels in each timber supply area. Note as well that WHAs and UWRs allow some industrial logging or road building in some circumstances. They also provide limited or no protection against many non-forestry activities that are likely to harm caribou or their habitat, including mining activities.

Land Act: This Act allows the government to establish Old Growth Management Areas (OGMAs) by order of the forest minister. OGMAs are meant to preserve some old growth trees and old growth forest ecosystems in the province. In practice, OGMAs are weak instruments that provide little protection against forestry, road building or other industrial activities. Multiple

independent reports – for example from the BC Forest Practices Board – have criticized the province’s approach to establishing and managing OGMAs for biodiversity conservation.

Oil and Gas

Petroleum and Natural Gas Act (PNGA): The PNGA regulates the issuance of subsurface petroleum and natural gas tenures. Tenure does not include authorization to conduct activities. In order to conduct any oil and gas activity or related activity, a proponent must acquire both tenure rights (e.g., drilling licences and petroleum and natural gas leases) and surface rights under the PNGA. A drilling licence confers a right to explore for petroleum and natural gas by drilling wells. A petroleum and natural gas lease grants exclusive right to explore for and produce both petroleum and natural gas. The proponent then must apply to the Oil and Gas Commission for operating licences, issued under the *Oil and Gas Activities Act*, to conduct oil and gas activities. Section 72 (1) of the PNGA enables the minister, by order, to withdraw Crown reserves of petroleum, natural gas, and oil-related resources from disposition. Where Crown reserves have been withdrawn from disposition under PNGA section 72(1), tenure will not be granted until the withdrawal order is cancelled by the minister. Under section 72(2) of the PNGA, withdrawn Crown reserves may be managed, developed or disposed of in accordance with the terms approved by the Lieutenant Governor in Council, or in accordance with regulations. In granting any future tenures, the Lieutenant Governor in Council may apply a set of criteria which includes environmental values.

- The creation of reserve areas under Section 72 of the PNGA could help efforts to conserve caribou habitat by enabling the minister to prevent disposition of land important to caribou conservation for petroleum and natural gas development.
- Under the PNGA and the *Oil and Gas Activities Act*, the Government of British Columbia may designate Resource Review Areas (RRAs). RRAs are a policy tool. The Ministry provides notice to industry that new petroleum and natural gas tenure requests will not be accepted in the designated areas. RRAs are used regularly to indicate to industry areas in which the Ministry will not accept posting requests or issue tenures. Where RRAs are in place, tenures will not be granted in any case.
- This legislation could also be an obstacle to creating a caribou conservation area, as it enables activities harmful to caribou and their habitat. Tenure-holders with rights to access oil and gas resources in the proposed conservation area could be entitled to compensation if their rights are affected.

Oil and Gas Activities Act: The *Oil and Gas Activities Act* regulates oil and gas and related activities in BC, including construction and operation of wells, facilities, oil refineries, natural

gas processing plants, pipelines and oil and gas roads, through permits, authorizations, orders and regulations. The Act requires the Oil and Gas Commission to consider the government's "environmental objectives" when deciding whether to issue a permit to undertake oil and gas activities. The objectives are set out in the *Environmental Protection and Management Regulation* (EMPR) made under the Act. The Act also requires persons carrying out oil and gas activities within operating areas to comply with environmental protection and management requirements established under the EMPR as well as with other regulations under the Act and its specified enactments.

Environmental Protection and Management Regulation (EMPR): The EMPR provides the legislative authority for the Minister responsible for administering the *Wildlife Act* to establish Wildlife Habitat Areas and Ungulate Winter Ranges (defined as defined as an area that contains habitat that is necessary to meet the winter habitat requirements of an ungulate species). Orders were made in 2011 to continue WHA and UWR designations previously made under FRPA.

- This regulation has the potential to help caribou conservation by establishing a wildlife habitat area and/or ungulate winter range within which operating areas for oil and gas activities cannot be located (note that the Oil and Gas Commission also must take OGMAs into account, though the Commission can allow some oil and gas activities in most WHAs, UWRs and OGMAs).

Environmental Assessment Act: The *Environmental Assessment Act* provides a mechanism for reviewing major projects to assess their potential impacts and ensure that major projects meet the goals of environmental, economic and social sustainability. The assessment process also ensures that the issues and concerns of the public, First Nations, communities, and government agencies are considered. Major projects are assessed for potentially adverse environmental, economic, social, heritage and health effects that may occur during the life cycle of these projects. Projects become "reviewable" in one of three ways: 1) prescribed by the *Reviewable Projects Regulation*, 2) designated by ministerial order and 3) at the request of a proponent.

- Where critical habitat is identified during the environmental assessment as potentially being affected by the project, it is likely that certificate conditions would require the proponent to avoid, minimize, or mitigate destruction of critical habitat.

- The issuance and specific content of the conditions is subject to Ministerial discretion; there is no legislative requirement to avoid critical habitat destruction, or to apply any specific mitigation measures. In practice, BC environmental assessment processes typically allow projects to go ahead even if they are likely to impact the critical habitat of threatened wildlife – mitigation measures are often unproven and are generally insufficient to avoid impacts to caribou and their habitat.

Mining (including coal mining and quarrying)

Environmental Assessment Act: See above description

Mineral Tenure Act: The *Mineral Tenure Act* recognizes four types of mineral tenure: mineral claims, placer claims, mining leases and placer leases. Placer claims and leases related to minerals that can be accessed from the surface (e.g., panning for gold). The Act enables the establishment, through regulation, of no registration reserves and conditional registration reserves, for mineral or placer claims, or both. In areas designated as no registration reserves, free miners are prohibited from registering a mineral or placer claim. In areas designated as conditional registration reserves, free miners may register a mineral or placer claim, or both, but subject to conditions. General conditions include that they must not interfere with another use of the land such as a pipeline, transmission line or gravel pit.

- This Act could hinder efforts to create a caribou conservation area, by creating possible obligations for the government to compensate tenure-holders whose interests are harmed through the creation of a new protected area.
- This Act could also help efforts to create a caribou conservation area, through allowing the government to set aside no registration reserves. Conditional reserves do not constrain activities in a way that considers caribou habitat, and thus would not be helpful to efforts to create a caribou conservation area.

Mines Act: This Act establishes the laws related to the operation of mines. Prior to starting any work on a mine, a proponent must hold a permit issued by the Chief Inspector of Mines issued under the *Mines Act*. The application process requires the proponent to outline a program for the conservation of resources and for the protection of the land affected by the mine. There is a broad definition of mine under the *Mines Act*, which includes any mechanical disturbance of the ground or any excavation to explore for minerals, and all activities including exploratory drilling. All major mining projects are subject to an environmental assessment under the BC *Environmental Assessment Act*, and therefore the caribou conservation considerations in that part of this memo apply.

Coal Act: The *Coal Act* authorizes the registration of coal licences and leases with the Province and provides the policy framework for mineral titles administration. A licensee has the right to

explore for and develop coal in the licence location including to enter use the surface area, to use and remove timber on the location (provided they have a free use permit under the *Forest Act*) and the right to use sand and gravel from the location for construction purposes. The licensee then has the ability to apply for a lease in order to produce coal at that location. A licensee or lessee's rights can be expropriated under the *Parks Act*, and a proponent may not hold a licence or lease in a park or ecological reserve under the *Ecological Reserve Act*.

Mining Right of Way Act: The *Mining Right of Way Act* provides for the right to use access roads owned by a person or to use existing roads on Crown land or private land for the purpose of gaining access to a mineral title. Existing roads must have been built under the *Mining Right of Way Act* or another Act; where they are not, the recorded holder must compensate the owner or operator of the road. Where there is a deemed owner of an access road, the owner may require a reasonable payment in respect of the maintenance costs of the access road. The *Mining Right of Way Act* also provides a recorded holder with the right to take and use private land for the purpose of securing a right of way, whether across, over, under or through the land. In order for the recorded holder to take or use private land, they must additionally submit a plan for the Minister's approval before they can proceed. This plan must include information on the location, design, construction, operation, maintenance, and abandonment of the facilities to be placed in the right of way and costs of the facilities and related environmental information.

Power Development

Hydro Power Authority Act: The *Hydro Power Authority Act* empowers the British Columbia Hydro and Power Authority (the Authority) to expropriate any property, power project or power plant for the purposes of hydro power development. The Authority is able, on the land it expropriates, to develop the land for a power plant, and to flood and overflow the land and store water on it. It is also empowered to enter land and cut down trees that may endanger personnel, equipment, and power plants, and make use of all roads (whether permanent or temporary) that may be required to access survey lines, power plants, and projected power plants. The *Environmental Assessment Act* applies to the Authority and therefore the caribou conservation considerations in that part of this memo apply.

Land Act: Components of a hydropower project which may be situated on Crown land, including transmission lines and roadways, require a Crown land tenure. These tenures are available under the *Land Act*. Hydro projects on Crown land are authorized by two types of Crown land tenure. At the initial or investigative stage an investigative licence is issued for up to 10 years to allow for site investigation and to obtain information required to complete the development plan for project initiation. At the project initiation phase, a proponent may apply for a multi tenure instrument, which requires them to describe environmental impact of the project and the ways it will be avoided.

- Considerations regarding caribou and caribou habitat could potentially be included in the project initiation application phase when the proponent must consider environmental impacts.

Heli-Skiing and Heli-Hiking

Land Act: As noted above, the *Land Act* is the primary legislation the government uses to convey land to the public for community, industrial and business use. The Act allows the granting of land, and the issuance of Crown land tenures in the form of leases, licences, permits and rights-of-way. A *Land Act* tenure is required for recreation operators on provincial Crown land (including land covered by water) if activities involve compensation or reward, received or promised, from residents and non-residents of BC. This includes the following types of recreation activities: guiding, transportation, training and entertainment.

- Heli-skiing and heli-hiking operations can have significant impacts on caribou populations. Tenure holders must abide by the Backcountry Recreation/Tourism Wildlife Guidelines, which stipulate that Ungulate Winter Ranges and other mechanisms for caribou protection be observed. The Guidelines set out desired behaviours within a heli-skiing/heli-hiking operation to minimize disruption to caribou and caribou population range or recovery.

Motor Vehicle and Public Access

Wildlife Act: While BC's *Park Act* gives authority to declare 'wildlife management areas' within parks, conservancies and recreation areas, the Minister of Forests, Lands and Natural Resource Operations has separate authority under this Act to designate free-standing wildlife management areas, 'wildlife sanctuaries' within wildlife management areas and 'critical wildlife areas' within wildlife management areas, "(i)f the minister requires land for habitat for a species of wildlife designated as an endangered species or threatened species." The *Wildlife Act* also makes it an offence (except as authorized under the Act and regulations): to hunt, take, trap, wound, or kill wildlife; to attempt to capture wildlife; to possess wildlife; to herd or harass wildlife with a vehicle; to allow a dog to hunt or pursue wildlife; and to import, export, transport or traffic in wildlife.

- This Act could help caribou conservation. The *Wildlife Act* defines any member of the family Cervidae, which includes caribou, as "big game" and the definition of wildlife includes game species. Caribou are thus included in the definition of wildlife, and game, for the purposes of the

Act. Note, however, that only four species are currently designated as endangered or threatened under the *Wildlife Act*, and caribou are not one of those species. They could be so designated by order of the Lieutenant Governor in Council.

Motor Vehicle Prohibition Regulation and Public Access Prohibition Regulation: The *Motor Vehicle Prohibition Regulation* (MVPR) and the *Public Access Prohibition Regulation* (PAPR) are both established under the *Wildlife Act*. These regulations make it an offence to use or operate motor vehicles, or certain types of motor vehicles, in specific areas, sometimes only for specific times of year. Motor vehicles can include snowmobiles or all-terrain vehicles, among other types. At the times and locations the prohibitions are in place, it is an offence to use or operate motor vehicles or certain types of motor vehicles. There are specific exemptions to the prohibitions that apply to specified areas. These include some commercial purposes and times of year. In addition to the specified exemptions, the *Permit Regulation* grants the regional manager authority to grant exemptions to the regulations, by permit. Permits may also be issued by the director, as enabled by the *Wildlife Act*.

- This regulation could help caribou conservation, depending on whether the areas prescribed in the schedules to the regulations overlap with the conservation area, and depending on whether the provincial land designation(s) for the conservation area already prohibit motor vehicles.

Off Road Vehicle Act and Regulation: BC's off-road vehicle (ORV) framework establishes a system of registration for the use of ORVs on Crown land. ORV laws apply to a wide range of vehicles, including snowmobiles, all-terrain vehicles, off-road motorcycles, side-by-sides, Jeeps, trucks, and SUVs. ORV owners must register vehicles used on Crown land. The Act allows the Lieutenant Governor in Council (provincial Cabinet) to make regulations prohibiting the operation of ORVs in prescribed geographic areas, or land in a prescribed class of land, or during prescribed seasons or periods of time.

This legislation could help caribou conservation provided that regulations are made or amended to establish that the conservation area is a prescribed geographic area within which ORVs are prohibited.

[1] *Yahey and Blueberry River First Nations v British Columbia*, 2021 BCSC 1287 - available online (CanLII) at: <https://canlii.ca/t/jgpbr> - see paras 1659-1660.