

**To The Honourable Rona Ambrose, P.C., M.P.,
Minister of the Environment**

**On behalf of
the Alberta Wilderness Association, the Federation of Alberta Naturalists,
the Canadian Parks and Wilderness Society, Nature Canada,
and the Sierra Club of Canada
(the Petitioners)**

**Petition in support of an Order
pursuant to section 34 of the *Species at Risk Act*, 2002, c. 29
for protecting endangered species in Alberta**

Submitted by:

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I. Introduction

The purposes of the *Species at Risk Act*, 2002, c.29 (“SARA”) are to prevent wildlife species from becoming extirpated or extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming endangered or threatened.¹

The Government of Canada describes the SARA as designed to meet one of Canada's key commitments under the international *Convention on Biological Diversity*.² Canada, in 1992, was the first country to ratify the Convention. Article 8 of the Convention commits Canada to conserving and protecting biodiversity in its natural state. It contains 13 specific requirements including Article 8(f), which requires the rehabilitation and restoration of degraded ecosystems and the recovery of threatened species, and Article 8(k), which requires developing or maintaining necessary legislation and/or other regulatory provisions for the protection of threatened species and populations.

The extent to which the SARA can be said to address both its purpose and Canada’s commitments under the Convention depends in large part on whether it applies to Canada’s at-risk species across the nation. Unfortunately, it may not. That is because the SARA applies automatically *only* to species under federal jurisdiction – aquatic species, migratory birds protected by the *Migratory Birds Convention Act, 1994*, and species on federal lands. Outside these areas, the SARA applies in a province only if discretionary authority is exercised under provisions in the SARA. One of these provisions is the so-called “safety net” which enables the federal Cabinet to order that the SARA applies in a province on the recommendation of the Federal Environment Minister if she considers that provincial laws not effectively protect endangered or threatened species.

This Petition is conceived as a means of determining whether the federal government intends the SARA to afford meaningful protection to all of Canada’s at-risk species. It

¹ Section 6

² *Convention on Biological Diversity* – Concluded at Rio de Janeiro, 5 June 1992. Entered into force, 29 December 1993, 31 I.L.M. 818 (1992) (the “Convention”)

examines how or whether Alberta provides effective legal protection for two SARA listed endangered species: the tiny cryptanthe and the small-flowered sand verbena. This Petition concludes that these species receive no effective legal protection in Alberta and that they are unfortunate inhabitants of the prairie ecosystem that is itself endangered. The Petitioners therefore ask the Minister of the Environment to recommend that the SARA apply to lands in Alberta to protect these species. Given the particular characteristics of these species such as a small footprint in Alberta, the Petitioners consider that the Minister's response will signal federal intention to ensure that the SARA will protect all of Canada's species, and particularly when they occur in provinces that do no protect them.

II. The tiny cryptanthe and the small-flowered sand verbena

Tiny cryptanthe (*Cryptantha minima*)

The tiny cryptanthe was listed in Part 2 of Schedule 1 (endangered) when the SARA came into force on June 5th, 2003. The following information is taken from the proposed *Species At Risk Act* Recovery Strategy ("Recovery Strategy") for the tiny cryptanthe (attached at tab 1). Also attached is the Alberta status report (attached at tab 2).

Tiny cryptanthe (*Cryptantha minima*), also known as small cryptanthe, little cryptanthe or little cat's-eye, is an annual vascular plant species in the borage family (Boraginaceae). Annual plants grow for only one year and a large portion of their life cycle is as seed.

Tiny cryptanthe, found in Alberta and Saskatchewan, was designated as endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) in 1997 and 2000).

In Alberta, tiny cryptanthe is mainly from the Dry Mixed grass Natural Subregion. The species' habitat is native mixed grasslands in moderately active depositional environments including abandoned sandy terraces on meander lobes in the river valley floodplain, sandy valley slopes, and sand hills near the valley edge. Twenty-eight

subpopulations or occurrences are reported, which make up the known provincial population. In Alberta tiny cryptanthe is associated with river systems, mainly the South Saskatchewan River east of Medicine Hat and in the vicinity of the lower Bow and upper Old Man Rivers.

Plant numbers appear to fluctuate greatly from year to year within subpopulations depending on amount and timing of rainfall, past year seed production and germination conditions. Occurrence reports range from one individual to tens of thousands of individuals. Since challenges of monitoring annual plant populations are so great, management objectives may be better focused on habitat features such as level of human activity, invasion of exotics and other changes in plant community composition caused by succession or alteration in natural disturbance regime (Elzinga et al. 1998).

Alberta's tiny cryptanthe population is small in extent of occurrence and area of occupancy. Area of occupancy, defined as the area within the extent of occurrence that is occupied by tiny cryptanthe excluding unsuitable or unoccupied habitats (IUCN 2001). The Canadian populations are disjunct from the nearest population in Montana by 450 km. Little genetic exchange between subpopulations separated even by a few hundred metres is expected.

A large amount of potential river valley and upland habitat in Alberta has been altered by human activity to the point that it is no longer available for colonization by tiny cryptanthe. Activities include cultivation or seeding to non-native pasture, development of oil and gas well sites, urban and rural residential development, construction of permanent access roads and invasion of native grasslands by non-native plant species. There are specific examples of conversion of native prairie in or near known tiny cryptanthe habitat within the last few years. Further reduction in tiny cryptanthe habitat and area of occupancy is predicted if current trends continue and measures are not taken to identify and protect known subpopulations

As stated in the proposed Recovery Strategy, habitat protection is essential to recovery, and needs to be used in combination with management to ensure the continued

persistence of this species.

Small-flowered Sand Verbena (*Tripterocalyx micranthus*)

The Small-flowered Sand Verbena was designated as threatened in April 1992 by the COSEWIC. Its status was re-examined and uplisted to Endangered in November 2002. The Assessment and update Status Report is attached at tab 3.

On January 12, 2005, Part 2 of Schedule 1, the list of endangered wildlife of the SARA, was amended by Order of the Governor in Council, on the recommendation of the Minister of the Environment, by the addition of 73 species including small-flowered sand verbena. This Order was based on the COSEWIC assessments and followed consultations with provincial and territorial governments, Aboriginal peoples, stakeholders and the public, and analysis of costs and benefits to Canadians.³

The following is a summary of the information concerning Small-flowered Sand Verbena excerpted from the COSEWIC status report, as well as an Alberta government status report on the small-flowered sand verbena (attached at tab 4).

The small-flowered sand verbena is an annual species and a member of the four o'clock family (Nyctaginaceae), so named because the flowers tend to open in the late afternoon.

Within Canada, small-flowered sand verbena is primarily distributed in south-eastern Alberta (eight general locations containing a total of 15 sites). As well, the species occurs at one site just east of the Alberta border in southern Saskatchewan.

In Alberta, small-flowered sand verbena is known from eight general locations. The number of plants at any particular site may vary substantially from year to year. The total population estimated in 2002 for all Alberta sites is 3600 plants, which likely represents a maximum along a wide continuum of population sizes for sand verbena in Alberta.

³ Canada Gazette Part 2 (Final Version) Vol. 139, No. 2 January 26, 2005 Registration, SOR/2005-14 January 12, 2005 SPECIES AT RISK ACT Order Amending Schedules 1 to 3 to the Species at Risk Act P.C. 2005-4 January 12, 2005

Small-flowered sand verbena sites are typically small in size, not exceeding 100 m². Population numbers can change dramatically from year to year based on climatic conditions, in particular, moisture levels. In 2001 the Lower Bow site contained 1 plant, while in 2002 the same site contained 789 plants. Small-flowered sand verbena is an ephemeral annual species, which, in good years, produces masses of seeds that remain viable in the sandy seed bank until a future growing season with suitable climatic conditions.

Small-flowered sand verbena is found in dry habitats, particularly in loose sands of dune and sand hill areas. Some element of active sand is usually required. The largest populations are on hard-packed finer sand on level terrain, but it also occurs on southwest and east-facing slopes and along dune ridge tops. Most sites are on the uplands, but the species may also occur in the valleys of the Lost and South Saskatchewan rivers where sand dunes extend down into the valleys. It is restricted to the Dry Mixed grass Subregion of the Grassland Natural Region, an area that has undergone extensive modification from its natural state by human activity.

Limiting factors of concern include dune stabilization, changes in land use and invasion of weedy species. The Grassy Lake site, containing more than half of the plant's Alberta population, is currently under threat as a result of sand removal and levelling of the main dune area. Considerable work on habitat protection, management strategies and status assessment should be undertaken as soon as possible as a means of maintaining the presence of this species in Alberta.

III. Prairie—An Alberta Endangered Ecosystem

As alluded to above, the fate of the tiny cryptanthus and the small-flowered sand verbena in Alberta is related to a larger issue - the degradation of natural prairie. These species occur in the Dry Mixed grass natural subregion of Alberta of which less than 2% is protected.

The Alberta Environmental Protection report⁴ on the grassland natural region of Alberta in 1997 included the italicised statements below, and the situation has only worsened in the last nine years.

Remaining Prairie

- *Our modern age has imposed "unprecedented stresses on the prairies, at times damaging and irreversible" (Adams et al. 1993, p131). Since settlement, natural fires have been suppressed and flood regimes have been altered. Natural grazing patterns by free-roaming native ungulates have been affected. Within only a few decades, human settlement and the degradation or loss of natural disturbance regimes have had significant impacts on prairie species, populations and ecosystems (Ostlie et al. 1996). Significant amounts of natural prairie have been lost in Canada and Alberta.*
- *In Alberta, it is estimated that "more than 80% of the native prairie landscape has been transformed by agriculture, industry and urbanization" (The Alberta Prairie Conservation Forum 1995). The area of uncultivated grassland continues to decline (Coupland 1973).*
- *The uncultivated grassland is compromised by fragmentation. Fragmentation is a process with recognizable phases that occurs over time as developments slowly change the nature of a landscape. Initially, natural habitat is extensive and contiguous. It makes up the majority of the landscape, or forms the matrix. Natural habitat remains predominant in the early stages of fragmentation and the fragments remain mostly connected to each other. As the area becomes more developed, the landscape becomes dissected into smaller and smaller parcels. Eventually, the developed landscape forms the matrix, and only scattered fragments of the original natural habitat remain. The once-continuous expanse of prairie landscapes has been fragmented by roads, fences and hydroelectric lines, cultivation, towns and water reservoirs.*
- *Herkert (1994), in a three-year study of prairie fragments, found that fragment size "strongly influenced bird communities within grasslands." Larger fragments consistently had not only more breeding birds but also greater species richness. Some species were never found in smaller fragments, even when suitable habitat was present; some seemed more dependent on habitat type than fragment size, and some were clearly "edge" species (ibid.).*
- *Island biogeography theory has been used extensively to predict what happens when fragments have lost their connectedness. As summarized in Alberta*

⁴ Alberta Environmental Protection. 1997. The Grassland Natural Region of Alberta. Natural Resources Service, Recreation & Protected Areas Division, Natural Heritage Protection and Education Branch. 229 pp.

Environmental Protection (1996), as fragments become isolated, the likelihood of individuals moving between fragments decreases, heightening the risk that species will become extirpated from the individual fragment. The effects on biodiversity can be devastating. Smaller patches can support fewer individuals, and smaller populations are more susceptible to local extinction than larger populations. "Habitat alienation and fragmentation can reduce the viability of plant and animal populations by reducing population levels, genetic diversity and gene flow among isolated subpopulations" (Westworth & Associates 1993a, pN-2). Both Tilman et al. (1994) and Wickett et al. (1992, p115) have found that the rate of species extinctions increases as remnant size decreases and those species that survive have less chance of surviving over the long term.

- *Habitat fragmentation has become recognized as the most serious threat to biological diversity, a "problem of global proportions" (Wickett et al. 1992, p115; Wilcox and Murphy 1985).*

Fragmentation

- *According to Wickett et al. (1992, p115), "the most severe case [of fragmentation] has occurred on prairies even though all ecosystems have been impacted." Once there were continuous expanses of native prairie, in various states of disturbance because of native ungulate grazing and natural fires. That situation has changed, as described by Owens and Myres (1973, p710):*

"...There [now] exists a patchwork made up of: (a) relatively undisturbed native prairies used as a source of wild hay, (b) grazed native prairie, (c) cultivated land with the native flora removed, (d) roadside ditches and field edges which often contain mixed exotic and native plant species, (e) land seeded to exotic grass species which may be used either as pastures or hay fields, and (f) areas where farm buildings and other structures have been erected often with windbreaks of native or introduced trees and shrubs..."

Native habitats now make up only "about 25% of the prairie landscape" (Bradley and Wallis 1996).

Causes of Fragmentation

- *Many agents can cause fragmentation of habitats. Some of these include cultivation, urban developments, etc. Rivers can be fragmented by the presence of dams as discussed by Trant et al. (1995) and Van Tighem (1989). Two additional major agents of fragmentation in the prairies are transportation networks and petroleum and natural gas exploration and development (e.g., wellsites and access roads).*

- *The use of land for transportation corridors (e.g., highways, roads, railroads) in Alberta has increased at a rapid pace since early settlement. Alberta now has over 50,000 km of roads and railroads in the Grassland Natural Region (Table 5), and over 95,000 km if wellsite roads are included (Table 6). Increased transportation networks increase "the ease of access to remote or inaccessible areas containing sensitive ecosystems" (Environment Canada 1986a). "Roads can change the flow of water through compaction, loss of infiltration, and alteration of surface flow resulting in the interruption of hydrological regimes" (Monds 1995). In addition, habitat is lost when a road is constructed and remaining habitat becomes further fragmented.*
- *The Grassland Natural Region contains approximately 74,629 wellsites (Table 6), each reached by an access route with an estimated average road length of 0.6 km per well for the prairie area of Alberta Horejsi (1995). There are about 44,777 km of access roads (Table 6). Using an average width of 15 meters for wellsite roads (ibid.), they have replaced an estimated 672 km² (=7.2 townships) of habitat in the prairies. This is likely a maximum figure since some roads to abandoned wellsites may have been reclaimed. Reclaimed roads, however, are unlikely to have been seeded with native species. They are often seeded to non-native species such as crested wheatgrass.*
- *When development occurs, an edge is created. This has associated edge effects that influence the native habitat beyond the actual development itself. Edge effects have not been well studied in prairie ecosystems. One study, however, found "alien" or exotic plant species (Christiansen 1990, p127) in a 23 m wide zone on either side of the road right-of-way.*
- *The Grassland Natural Region wholly or partially overlies at least 183 natural gas and 42 oil fields (Energy Resources Conservation Board, 1994). These fields cover approximately 75% of the natural region. Of the four grassland subregions, the Dry Mixedgrass and Northern Fescue Subregions have been impacted the most by oil and gas exploration and development.*

Consequences

- *The fragmentation, degradation and loss of natural prairie habitat, including upland grasslands and wetlands, has had significant impacts on the plant and animal species that depend on those habitats. Many of those species are now considered at risk in Canada, as determined by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC), and other agencies and organizations.*
- *About 77%, or 24 of the 31 species at risk in Alberta, rely on prairie habitats. According to Diamond (1993, p183), "prairie species can be described as nearly four times more likely than the national average to be at risk." At least one-third of the mammals and birds listed as endangered, threatened, or vulnerable by*

COSEWIC are associated with native prairies (World Wildlife Fund 1992). "Species now at risk are threatened most often by loss of habitat, so the current status of species of concern is usually an indicator of the availability of suitable habitat" (Diamond 1993, p181).

The following information from Alberta Prairie Conservation Plan 2006-2010⁵ indicates lack of progress on prairie conservation since 1997 and in fact that the situation is more serious.

The last Alberta PCAP (2001-2005) reviewed some of the threats to landscape integrity in Alberta's prairie and parkland: urban expansion and subdivisions driven by a growing population with many affluent Albertans seeking a country lifestyle; agricultural conversions as new markets support specialty crops such as potatoes on sandy soils; resource extraction as high commodity prices drive full extraction of aging conventional oil and gas fields; and introduced species invading the native landscape along river corridors and linear disturbances on the landscape. All these pressures continue to exist and have been joined by a suite of new ones: the development of wind farms dotting exposed ridges on the prairie landscape; feedlot expansion and intensification; development of a non-conventional gas industry to exploit coalbed methane and growing recognition that the time to capitalize on the vast prairie coal reserves may be coming.

Perhaps more fundamentally, the socio-economic context is changing. Post 9/11 and BSE, open borders are no longer taken for granted and the need to maximize value-added in Alberta and develop new markets is growing rapidly. In an uncertain geopolitical world, declining conventional energy supplies and rapidly industrializing Chinese and Indian economies are bringing the vulnerabilities of our carbon-based economy into sharp focus. But before the postcarbon economy asserts itself, the carbon economy must run its course. And Alberta is a short- to medium term nexus for North American energy security. Finally, there are the uncertainties of climate change and what it might mean for everything.

IV. Protecting biodiversity under the *Species At Risk Act*

The purpose of the SARA is set out in s.6:

s.6 The purposes of this Act are to prevent wildlife species from becoming extirpated or becoming extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity and to

⁵ Prairie Conservation Forum. March 2006. Alberta Prairie Conservation Action Plan: 2006-2010. Published by the Prairie Conservation Forum, Lethbridge, Alberta. 28 pp <http://www.AlbertaPCF.ab.ca/>

manage species of special concern to prevent them from becoming endangered or threatened.

The section of the SARA entitled, “Measures to Protect Listed Wildlife Species,” describes the following measures for achieving these purposes: a scientific body for the classification of species, COSEWIC, is created, species are “listed” on the official list of species that are extirpated, endangered, threatened or of special concern (ss. 27-31) which triggers obligations under the Act including prohibitions against harm (ss. 32-36), and protections of residence or habitat (ss. 32-26 and ss.56-64), recovery planning and critical habitat identification (ss.37-46), and recovery plan implementation (ss.47-64).⁶

More particularly, the prohibitions are as follows (the “prohibitions”):

32. (1) No person shall kill, harm, harass, capture or take an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species.

Possession, collection, etc.

(2) No person shall possess, collect, buy, sell or trade an individual of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species, or any part or derivative of such an individual.

Deeming

(3) For the purposes of subsection (2), any animal, plant or thing that is represented to be an individual, or a part or derivative of an individual, of a wildlife species that is listed as an extirpated species, an endangered species or a threatened species is deemed, in the absence of evidence to the contrary, to be such an individual or a part or derivative of such an individual.

(Also, section 2 defines “endangered species” to be a wildlife species that is facing imminent extirpation or extinction and “threatened species” means a wildlife species that is likely to become an endangered species if nothing is done to reverse the factors leading to its extirpation or extinction.)

⁶ A detailed review of the SARA is contained in Smallwood, K. *A Guide to Canada’s Species at Risk Act*, (Vancouver: Sierra Legal Defence Fund, 2003) at: http://www.sierralegal.org/reports/SARA_Guide_May2003.pdf

The prohibitions apply only to lands in a province that are federal lands with respect to listed wildlife species that are aquatic species or a species of birds that are migratory birds protected by the *Migratory Birds Convention Act, 1994* (hereafter referred to as species under “federal jurisdiction”) (s.34).

For species that are not under federal jurisdiction, the so-called “safety net” empowers the Governor in Council to make an order that the prohibitions apply “in lands of a province that are not federal lands.” (s.34(2)).

The making of an order by the Governor in Council’s must be preceded by a recommendation by the Minister of the Environment who must make the recommendation if a province’s laws do not effectively protect a species:

s.34(3) The Minister must recommend that the order be made if the Minister is of the opinion that the laws of the province do not effectively protect the species or the residences of its individuals.

The Minister must consult with the appropriate provincial minister before making her recommendation (s.34(4)(a)).

“Effective protection” is not expressly defined in SARA but its meaning may be defined in light of the purpose of the SARA as set out in section 6. In this context, ‘effective protection’ requires laws “to prevent wildlife species from becoming extirpated or becoming extinct” and “to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity.” This contextual interpretation of ‘effective protection’ relies on the plain and ordinary meaning of ‘protection’ and recognizes that an endangered or threatened species can only be protected from extinction if it is identified as needing protection, if harm to it and its habitat is prohibited, and if recovery actions undertaken. This requirement for the three elements, identification, protection and recovery, recognizes the simple reality that threatened and endangered species are, by both definition and circumstance, in need of intervention to reverse the threat of imminent extinction or extirpation and require both protection and recovery.

The provisions in the SARA's "Measures to Protect Listed Wildlife Species" may therefore be seen as a benchmark against which a province's laws may be measured and the Minister's obligation in section 34 determined. If a province's laws do not address these components of the SARA to ensure a species is effectively protected, the Minister would have no choice but to recommend to the Governor in Council that section 32 and/or section 33 apply to the provincial lands.

The Petitioners take the position that the grant of discretion contained in s.34(3) "in the opinion of" does not free the Minister from the obligation to make the recommendation to Governor in Council where the laws of the province do not effectively protect the species. Section 34(3) says the Minister must make the recommendation and this mandatory requirement cannot be disregarded where the Minister is informed of objective facts that rationally support an opinion. Failure to make the necessary recommendation would constitute reviewable error either because in failing to make a decision the Minister fails to exercise a statutory obligation or because the decision is unreasonable.

Lastly, section 34(4) requires the Minister to consult with the appropriate provincial minister prior to making the recommendation. Section 34(3) admits of no considerations other than an evaluation of effective legal protection, therefore, the nature of the Minister's consultation in s.34(4) consists only in confirming the existence of laws that effectively protect a species consistent with the SARA.

V. Alberta's Endangered Species Protection Laws

Alberta does not currently have one particular law that may be characterized as an endangered species or biological diversity protection law. Alberta's legal protections, or lack thereof, for endangered or threatened species must therefore be determined from reviewing their statutory regime generally. From this review, the following statutes can be discerned which may address biodiversity decline in the province.

The *Wildlife Act*⁷

The *Wildlife Act* is a general act whose provisions demonstrate its historical intention to manage the hunting of game-animals. The *Wildlife Act* has been amended to refer to endangered species.

The *Wildlife Act* contains contain a process for evaluating the status of species at risk in Alberta through the Endangered Species Conservation Committee (ESCC) and its scientific arm, the Scientific Subcommittee.⁸After preparing status reports on species (such as those attached), the Scientific Subcommittee of the ESCC assesses what the risk of extinction or extirpation is for Alberta species that have been identified as potentially at risk. The ESCC then decides what recommendation to make to the minister regarding the legal designation and management and recovery of species, however, the minister has discretion regarding whether to adopt the recommendations.

The *Wildlife Act* defines endangered species to include “a kind of plant, alga or fungus prescribed as an endangered plant, alga or fungus.”⁹ Part 3 of Schedule 6 of the *Wildlife Regulation* prescribes endangered plants.¹⁰ Thus far, however, no plants have been prescribed. On this basis alone the Act could not be said to effectively protect the tiny cryptanthus and small-flowered sand verbena.

Once a species is prescribed as “endangered,” several provisions become applicable. The *Wildlife Act* generally prohibits hunting, exportation, trafficking, and possession of wildlife¹¹ but, with the exception of “hunting,” there is no prohibition against killing, harming, harassing, capturing or taking a species equivalent to section 32 of the SARA and protection of habitat extends only to nests and dens of listed species.¹²

⁷ *Wildlife Act*, R.S.A. 2000, c.W-10

⁸ *Wildlife Act*, s.6

⁹ *Wildlife Act*, ss. 1(i), (iii)

¹⁰ Alta. Reg. 143/97, s.4(1)(k)

¹¹ ss. 24, 25, 55, 62

¹² s.36

The Act enables but does not require identifying critical habitat, nor does it require preparation and implementation of strategies to recover populations.¹³ It also does not require the automatic listing of SARA listed species that live in Alberta.

Therefore, in the context of ‘effective protection’ requiring laws “to prevent wildlife species from becoming extirpated or becoming extinct” and “to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity,” the *Wildlife Act* cannot be said to effectively protect the tiny cryptanthe or the small-flowered sand verbena.

*Forests Act*¹⁴- The tiny cryptanthe and the small-flowered sand verbena are grassland species and do not exist in any area of Alberta within the jurisdiction of this Act.

*Forests and Prairie Protection Act*¹⁵- this Act and its regulations deal mainly with fire and fire prevention and do not address identification, protection and recovery of these or any endangered or threatened species.

*Government Organizations Act*¹⁶- this Act enables the preservation of natural areas “for the propagation of plant or animal life” (sch. V.) but none have been created relevant to this Petition and the Act otherwise does not otherwise address identification, protection and recovery of these or any endangered or threatened species.

*Environmental Protection and Enhancement Act*¹⁷- theoretically, at least, this Act contains provisions that, if exercised, could result in tangential protection of biodiversity but it does not expressly address identification, protection and recovery of these or any endangered or threatened species.

¹³ *Wildlife Act*, s.6(3)

¹⁴ *Forests Act*, R.S.A. 2000, c.F-22

¹⁵ *Forests and Prairie Protection Act*, R.S.A. 2000, c.F-19

¹⁶ *Government Organizations Act*, R.S.A. 2000, c.G-10

¹⁷ *Environmental Protection and Enhancement Act*, R.S.A. 2000, c.E-12

*Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*¹⁸- this Act provides the Lieutenant Governor in Council with the authority to, by regulation, designate as an ecological reserve any area of public land that contains rare or endangered native plants or animals that should be preserved,¹⁹ provide for the management and preservation of the animal and plant life,²⁰ and prohibits collecting, destroying, or removing any plant or animal life in a wilderness area or ecological reserve.²¹ The Act, however, does not allow the withdrawal, cancellation or termination of an interest under a petroleum or natural gas disposition in an ecological reserve. In sum, this Act is entirely discretionary and does not provide for measures of a breadth required by the SARA to ensure identification, protection and recovery of at-risk species. Lastly, no areas have been created that encompass the locations of the tiny cryptanthe and the small-flowered sand verbena.

*Provincial Parks Act*²²- This Act does not create provisions that identify, protect or recover endangered or threatened species or their habitat (and no parks encompass the locations of the tiny cryptanthe and the small-flowered sand verbena).

Conclusion

Even if one were to cobble together various Alberta's laws, they do not address any of the SARA elements of identification, protection and recovery to ensure effective protection of endangered species. As such, there is no basis upon which the laws of Alberta could be said to provide effective 'legal protection' for these endangered species as that term is used in s.34(3) of the Sara.

¹⁸ *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, R.S.A. 2000, c.W-9

¹⁹ s.4 (1)(d)

²⁰ s.5(a)

²¹ ss.8(1)(f-h)

²² *Provincial Parks Act*, R.S.A. 2000, c.P-35

VI. Conclusion

The extent to which the SARA can be said to address Canada's at-risk species wherever they live in Canada depends on whether the federal government will exercise its authority under the SARA to protect species on provincial lands. Currently, the federal government has not done so, even though the SARA has been in place over 3 years and most of Canada's provinces and territories do not have laws that meet the SARA's goals of identifying, protecting and recovering Canada's endangered and threatened species.

Whether the federal government intends the SARA to afford meaningful protection to all of Canada's at-risk species, can be measured by how it responds to a lack of protection for biodiversity in the provinces. Here, the Petitioners have chosen to highlight two endangered species - the tiny cryptanthe and the small-flowered sand verbena. As perhaps signalled by their names, these species occupy a miniscule portion of Alberta's highly fragmented prairie landscape and are candidates whose protection may offer the least impact when compared to other endangered species currently residing in Alberta.

And as this Petition reveals, Alberta does not provide effective legal protection for these endangered species. Indeed, even if Alberta mustered all the laws it its disposal, they could not on any rational basis be said to address any of the elements of "effective protection" to prevent the extirpation of these species.

The Petitioners therefore ask the Minister of the Environment to recommend to the Governor in Council that they order that section 32 of the SARA applies to the lands in Alberta where the tiny cryptanthe and/or the small-flowered sand verbena live. The Petitioners consider that the Minister's response will signal federal intention to ensure that the SARA will protect all of Canada's species, and particularly when they live in provinces that do not protect them.

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