

INVESTING IN CONSERVATION WITH REVENUE FROM CREATIVE SENTENCING

THE CHARACTERISTICS OF THE COURT AWARD PORTFOLIO MANAGED BY
THE BC HABITAT CONSERVATION TRUST FOUNDATION, 1993–2009



*A thing is right when it tends to preserve the integrity, stability, and beauty
of the biotic community. It is wrong when it tends otherwise. — Aldo Leopold*

Cover: The proceeds of 5 creative sentencing awards were invested in the strategic placement of rocks and 13 large woody debris habitat structures in Silverhope Creek to help restore habitat for 5 species of fish.

Photo: Dave Harper, BC Conservation Foundation.

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Executive Summary

The Judiciary in British Columbia has a number of options in sentencing violators of environmental laws. In addition to fines, other traditional penalties, and alternative measures such as out of court settlements, many statutes now provide innovative opportunities for creative sentencing.

One option for creative sentencing is the payment of money to a trust fund with conservation goals for certain projects or actions for the public good.

The Habitat Conservation Trust Foundation and the Grizzly Bear Trust Fund are the two trust funds in BC that can receive such payments. The Foundation has been the beneficiary of most awards.

An analysis of the management of creative sentencing payments-a portfolio of so called "court awards" managed by the Habitat Conservation Trust Foundation for the April 1, 1993 to March 31, 2009 period found that over 70 % of revenue received from awards had been either invested in or committed to conservation projects. It also found:-

Award Revenue Paid to the Foundation

- \$2.6 million was the value of the 295 creative sentencing awards that were directed by the court to the Habitat Conservation Trust Foundation. Two of these awards were donations resulting from out of court settlements that occurred during the judicial process;
- \$2.1 million in payments was received and \$0.5million was owing. Attempts to collect the \$500,000 "receivables" has met with little success;
- Awards were received from court in all regions of the province;
- 61% of the total number of awards was made under the provisions of the *Wildlife Act*;
- 46% of the total value of awards was made under the provisions of the *Waste Management Act* and its successor, the *Environmental Management Act*;
- Prosecutions in the Lower Mainland Region resulted in the highest number of total awards (33%) and highest value of awards (38%); and
- In the last 5 years, the total number of awards directed to HCTF has ranged from 20-36 per year and the value of a single award has ranged from \$150 to \$148,000.

Investments in Conservation Projects by the Foundation Using Award Revenue

- \$1.3 million from 165 awards was invested in 70 unique conservation projects and a further \$160,000 had been committed to future projects.
- Project investments using creative sentencing awards were made in all regions of the province;

- Investment reflected sources of revenue. Over half of the total number of project investments used revenue from awards pursuant to the *Wildlife Act* while almost half of the value of total project investments were related to provisions of the *Waste Management Act* and its successor, the *Environmental Management Act*;
- Awards resulting from prosecutions in the Lower Mainland Region were invested in the highest number of total projects (40%) and had the highest value for contributions to conservation projects (44%); and
- In the last 5 years, the number of investments in conservation projects ranged from 3 to 24 per year and the total annual value of investments in conservation projects ranged from \$74,000 to over \$360,000.

1 Introduction

The Habitat Conservation Trust Foundation (HCTF) is a not for profit charitable foundation established in 2007. The primary purpose of the Foundation is to act as Trustee of the Habitat Conservation Trust that was created by an amendment to the *Wildlife Act*.

The Foundation succeeded the Habitat Conservation Fund (Special Purpose Fund) which operated from 1981 to 1996 and the Habitat Conservation Trust Fund (Legislated Trust Fund) that operated between 1996 and 2007.

Hunters, anglers, trappers and guide-outfitters contribute to the Foundation's habitat and species enhancement projects through surcharges on a variety of licences issued under the authority of the *Wildlife Act*. This revenue accounts for over \$ 5.5 million annually. Voluntary contributions, revenue from special permits and sustainable uses of conservation lands, proceeds from the sale of education materials, and court awards provide secondary sources of revenue.

The mission of the Habitat Conservation Trust Foundation is to invest in projects that maintain and enhance the health and biological diversity of British Columbia's fish, wildlife, and habitats so that people can use, enjoy, and benefit from these resources.

The Foundation helps fund a variety of conservation work, including:

- Conservation projects that restore, maintain, or enhance native wild freshwater fish populations and habitats;
- Conservation projects that restore, maintain, or enhance native wildlife populations and habitats;
- Activities required to initiate or to ensure the success of eligible conservation projects, as described above;

- Information, education, and stewardship projects that enhance users' enjoyment of fish, wildlife, and habitats or that foster human attitudes and behaviours favourable to management and conservation; and
- Projects that acquire land or interests in land to secure the value of these areas for conservation purposes.

These investments contribute to healthy and diverse populations of native fish and wildlife by improving knowledge, restoring or managing habitats, and enabling stewardship. Research funding is limited to projects having a direct application in management or conservation of native fish, wildlife, and habitats.

The uniqueness of the Habitat Conservation Trust Foundation comes from its dedicated funding obtained from angling, hunting, trapping, and guiding licence surtaxes; its ability to receive payments from creative sentencing ordered by the BC court; its provincial scope; its engagement of common but committed citizens; its ability to fund acquisition of key habitats; and, for certain projects, its ability to fund up to 100% of the total project costs.

2 Scope of this Report

This report will provide a historic perspective of the creative sentencing payments received and invested by the Foundation during the 16 year period from April 1, 1993 to March 31, 2009.

The objective of this project is to produce a summary document for use in print and electronic formats that increases awareness about the Foundation's role in helping to remedy environmental damage and/or improve the environment with awards made under creative sentencing provisions of environmental legislation used in British Columbia. It will also:

- Describe creative sentencing options for environmental infractions, define creative sentencing as it pertains to the Foundation and describe the composition of the award portfolio that it manages. The policy framework for management of awards and the results of conservation project investments to March 31, 2009 will also be described;
- Document three "case studies" that briefly chronicle the elements of specific awards: investigation, prosecution, judgment/awards, and the conservation results of project investments; and
- Produce "Court Award Profiles" that provide summary information about the offence, judgment details and conservation project investment results associated with individual awards in the portfolio to March 31, 2009.

3 Creative Sentencing in the Context of the Sentencing of Environmental Offenders

In her award-winning essay, Shockey (2006) noted that

“The Supreme Court of Canada has recognized that the environment is one of the greatest challenges of our time and is a fundamental value of superordinate importance.

Using fines as punishment for a crime related to the environment can be problematic. They are rarely substantial enough to prevent future crimes and are often seen as a cost of doing business. A fine should not be a mere licence to pollute.”

In addition to traditional penalties and fines, a number of environmental statutes in Canada and the provinces now include “creative sentencing” provisions. The wording of statutes provides the court with several options when considering creative sentencing.

One option under these provisions allows a judge sentencing a defendant for offences committed under an Act to take, as McRory and Jenkins (2003) describe, “an innovative approach to sentencing by ordering that funds be dedicated to certain projects” or actions for the public good.

“At first glance some may be hesitant to encourage creative sentencing options because of the positive, hidden effects that are reaped by the offender who may gain good publicity from contributing to the public good. However, although fines given through creative sentencing orders are likely not the best way to condemn past behaviour..., they should not be rejected because they encourage society’s ecological consciousness and are a good moral contrast to the immoral conduct of offenders. Indeed, it is possible that creative sentencing orders can further the aims of retribution and denunciation by elongating the time period that society is aware of and condemns the offender’s conduct.

Such sentencing measures should be encouraged, not because they aim to prevent future offences or because they punish immoral actors, but because they speak to the ecological consciousness of society and address the environmental harm itself.”

This creative sentencing option gives the court a way to guarantee that money from settlements is directly invested to either repair/ restore the actual harm done by the defendants or to generally benefit or improve ecosystems, habitats and/or species in the general area of impact. It is desirable to have the scope of the required project work reflect the impacts of the offense.

And as Powell (2001) noted:-

“Creative sentences have great potential to not only punish an environmental offender but also to remedy the environmental damage resulting from the offence.”

3.1 Canada (Federal Government)

Internet and library searches for references about creative sentencing options associated with environmental offenses in Canada provided some interesting perspectives.

Hughes and Reynolds (2009) reported that

“2005 survey of federal and provincial statutes revealed that a wide variety of environmental legislation now contains some form of creative sentencing provision. However, the survey also indicated there is no real uniformity in federal and provincial regulatory schemes.

In the federal sphere, the most comprehensive creative sentencing provisions are found in the *Fisheries Act* and the *Canadian Environmental Protection Act*, 1999. Most provinces have incorporated at least some creative sentencing options into their core environmental legislation as well.”

They identified 10 creative sentencing options most frequently available in Canadian Statutes:

- “Removal of Benefits

Statutes may contain provisions which either confiscate the profits realized by commission of the offence (i.e., a “profit-stripping” fine), or authorize the forfeiture of property used in its commission. The latter can be used in cases such as wildlife infractions, to decrease the likelihood of repetition of the offence. (e.g. seizure of traps, firearms) or to remove potential profits (e.g. poached wildlife parts);

- Restitution as Compensation

Property losses that result from the commission of an offence may result in a sentencing order for payment of compensation;

- Licence Revocations and Prohibition Orders

Most statutes give the sentencing court the ability to order an offender to stop any action that may result in the continuation or repetition of the offence;

- Trust Funds, Research Orders and the Environmental Damages Fund

Some statutes permit the sentencing court to impose a financial penalty on an offender either to conduct ecological research, or to pay the funds into some particular trust fund with conservation goals;

- Remedial and Prevention Orders

As an alternative to paying money into some type of restoration project, most environmental statutes permit the sentencing judge to require the offender either to take direct action to remedy any harm, or, where it is clear what steps need to be taken to prevent future harm, to order the defendant to take such steps;

- Community Service Orders

In a similar vein, statutes frequently authorize courts to order community service. This is particularly useful if cleanup or direct remediation is either impossible or beyond the defendants' means, yet the offenders' expertise could result in a related environmental or public benefit;

- Notification, Publication and Information Orders

Another option in many environmental statutes is the ability of the court to require the offender to provide data to affected individuals, the community at large, or to the Crown;

- Suspended Sentences and 'Probation'

Some Acts permit the Court to suspend sentences of fines or imprisonment, and make a sentencing order alone; and

- Ticketing and Diversion Processes

In addition to traditional sentences (fines, imprisonment) and creative sentences, there are various sentencing diversion processes available in some Acts."

For example, Section 79.2 of the Federal **Fisheries Act** allows the court to make environmentally friendly orders against anyone convicted of an offence. The court can order an offender to do restoration or enhancement works, pay money for habitat conservation and protection works, or many other activities that benefit the environment. Case law shows a wide range of judgments such as "carry out habitat restoration according to engineering consultant reports"; "develop and implement oil spill awareness and response training for pulp mill employees"; "construct a stormwater detention facility at a wood treatment plant"; and "develop an education component on operating a salmon counting fence".

In the British Columbia **Water Act**, the court may require a convicted party to take action to remedy damage done, or to engage in an activity to prevent the repeat of the offense, such as paying for compensation, performing community service, or payment of a bond to ensure compliance.

The option described above- where statutes permit the sentencing court to impose payment to a trust fund with conservation goals- describes the relationship that the BC court has with the Habitat Conservation Trust Foundation.

Such payments may be all or part of the total payment (sentence) imposed by the court.

3.2 Alberta

In a 10 year review of creative sentencing associated with environmental statutes in Alberta, McRory and Jenkins (2003) also note that:-

"Creative sentencing is part of the punishment of an environmental offender after a finding of guilt. What is often forgotten is that the sentencing judge is the ultimate decision maker, not

the parties who bring the idea for creative sentencing to the court. Only if the judge accepts the recommendations of the parties, do they become part of the sentencing order.

A theme that is repeated over and over again by the judiciary in Alberta is that creative sentencing allows some good to come from bad, that something positive can be done after an environmental incident. Courts have described creative sentencing as 'looking to the future' or as a way for defendants to help others in the same industry and in the same predicament to avoid committing further environmental offences. It is in this way that the creative sentence serves the interests of justice including the public interest."

How does the Alberta court approach creative sentencing?

"First, the sentencing judge determines the appropriate total penalty based on the circumstances of the case. Then, the judge considers whether and what amount of money should be available for creative sentencing projects.

Second, generally speaking, the case law suggests that one cannot deduct clean up costs from the total penalty.

Third, the trend in Alberta has been a fifty-fifty split between a fine and creative sentencing as advocated by the provincial Crown. In other jurisdictions including BC and at the federal level, the creative sentencing portion of the offence may constitute up to 90% or more of the total penalty.

Creative sentencing penalty amounts are included in the monetary penalty totals and reflect the cash-value equivalent of the creative sentence. Alberta Environment supports and promotes the use of creative sentencing to make penalties more meaningful and result in clear benefits for the environment. Coupled with a standard fine, creative sentences typically direct the offender to remedy or prevent harm to the environment or perform a community service. Under the *Environmental Protection and Enhancement Act*, Creative Sentencing Orders have been an option in Alberta since 1993."

3.3 British Columbia

The Judiciary in British Columbia has a number of options in sentencing violators of environmental laws. In addition to fines, traditional penalties and alternative measures, many provincial and federal statutes now provide innovative opportunities for creative sentencing.

As noted above, one option for creative sentencing is the payment to a trust fund with conservation goals for certain projects or actions for the public good.

In 2004, Wruck stated:

"In British Columbia, the provincial government has established two similar funds under legislation. These funds are the Habitat Conservation Trust Fund and the Grizzly Bear Trust Fund. British Columbia has borrowed heavily from the federal government in this area and has also enacted creative sentencing provisions in s. 84.1 of the *Wildlife Act*, R.S.B.C. 1996, c. 488, s. 41.1 of the *Water Act*, R.S.B.C. 1996, c. 483 and s. 56.1 of the *Waste Management Act*, R.S.B.C. 1996, c. 482. The provincial legislation has gone one step further than the (federal) Environmental Damages Fund and has established the

two provincial trust funds in legislation. A court under these provisions is given express authority to direct payments into these funds if it considers it appropriate to do so for environmental rehabilitation purposes.”

The Habitat Conservation Trust Foundation has been the beneficiary of the majority of the cash payments for this type of creative sentencing award. Only a few awards have been directed to the Grizzly Bear Trust Fund.

Since Wruck’s commentary,

- the ***Waste Management Act*** has been repealed and replaced by the ***Environmental Management Act***. Section 127(1)(e) of that Act describes pertinent creative sentencing provisions; and
- Section 41.1 of the ***Water Act*** has been repealed and replaced by Section 95(e).

In addition to the provisions of the ***Wildlife Act***, ***Water Act***, ***Environmental Management Act***, and ***Dike Maintenance Act***, enforcement officers and prosecutors in the Province also utilize the creative sentencing provisions of other provincial and federal statutes to encourage payment of funds into a trust fund with conservation goals. These include:

- Section 79.2 of the ***Fisheries Act*** (Canada)
- Section 16(1) of the ***Migratory Birds Convention Act*** 1994 (Canada); and
- Sections 89 (3) and 89 (4) of the ***Offence Act*** (British Columbia)

It is noteworthy that federal enforcement staff in British Columbia also utilizes the provisions of federal legislation to encourage the BC court to consider creative sentencing payments. The number and value of such payments and the resulting conservation investments are not part of the Foundation’s portfolio of creative sentencing awards and therefore not included in this analysis.

However, it is important to recognize that both Provincial Crown Counsels and Federal Crown Counsels are active in seeking creative sentencing awards for environmental violations in British Columbia and that the awards managed by the Foundation are part of a larger effort by society to serve the public interest.

Here is some general information about how two of the major Federal Departments approach creative sentencing of environmental offenders:

Fisheries and Oceans Canada

Staff does not often utilize a trust account approach to managing revenue from creative sentencing. When Federal Crown Counsels prosecute fishing and habitat violations of the ***Fisheries Act***, they work with local Fisheries Officers to recommend, on a one-off basis, appropriate community-based conservation projects

to address local area needs and to help address any remedial and conservation projects that are part of court orders.

An example of this is *R. vs. Hicks* where the defendant was fined \$6100: \$100 was a fine that went into Government of Canada general revenue and the remaining \$6000 was split between two salmon enhancement groups for their use in running hatchery programs. Other examples of such orders include:

- \$2000 to the BC Federation's Wilderness Watch Program and \$18,000 to enhance fisheries habitat in the Eagle River system;
- \$5000 to enhance the affected fish habitat;
- a fine of \$200 and payment of \$20,000 to local groups for fish habitat enhancement;
- a \$500 fine and \$14,500 to the Black Creek Board to restore Black and Millar creeks (both creeks are salmon habitat, and Black Creek is a top Coho producer on Vancouver Island); and
- a fine of \$1000, and an order to pay \$25,000 to restore streamside vegetation.

At times, Fisheries and Oceans staff asks the court to direct monies into a special purposes accounts fund that, depending on how the court words the transfer, can be used for enforcement and/or conservation actions.

It should be noted that the 26 creative sentencing awards to the Habitat Conservation Trust Foundation, accounting for about \$500,000 during the 1993-2009 period, represents only part of the total creative sentencing revenue that was received from prosecutions in BC under the *Fisheries Act*.

Environment Canada

Like Fisheries and Oceans Canada, Environment Canada can utilize the Environmental Damages Fund (EDF) to administer creative sentencing payments.

"The object of the EDF is to assist in the rehabilitation of the injured or damaged environment or natural resource and to ensure that proposed projects to help rehabilitate the environment are cost effective and technically feasible.

The EDF does not have a statutory or regulatory basis, nor is it referred to in any federal legislation. The EDF was created by a Treasury Board Decision made pursuant to the *Financial Administration Act* on November 30, 1995, establishing a special holding or trust account called the EDF.

Although the EDF is not found or referred to in any statute or regulation, this has not created a problem in respect to the receipt and use of any funds paid into the EDF. For example, with respect to regulatory prosecutions the Parliament of Canada has enacted legislation which permits creative sentencing to take place. In other words courts are given the power and the discretion under legislation like the *Migratory Birds Convention Act*, 1994, *Fisheries Act*, *Canada Wildlife Act*, *Canadian*

Environmental Protection Act, 1999, S.C. 1999 c. 33 (CEPA), *Canada Shipping Act*, and *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)* to impose not only fines and penalties, but also, when sentencing a polluter, to direct monies to be used for various types of environmental purposes, including research and restoration of the environment. In addition, the courts can require polluters to be subjected to environmental audits and perform community service as well as make payments to the EDF.

It should be noted that courts also have authority under the creative sentencing provisions of provincial environmental legislation to make orders requiring offenders to pay monies to the EDF. This recently happened in Alberta under the *Environmental Protection and Enhancement Act*, S.A. 1992, E-13.3.

In addition, the EDF can also receive monies from domestic and international funds including the *Canadian Ship Source Oil Pollution Fund* as well as from the *International Compensation Regime*.

In the British Columbia-Yukon region there have been 28 convictions in the 1995-2003 period and 10 of these have resulted in monies being paid directly into the EDF. Sixty percent of those monies deposited to the EDF have actually been spent on rehabilitating and restoring the environment to its pre-pollution condition. The legislation that has been used in directing monies to the EDF in this region includes the *Migratory Birds Convention Act*, the *Fisheries Act*, *CEPA*, the *Canada Shipping Act*, and *Wild Animal and Plant Protection and Regulation of International and Interprovincial Trade Act (WAPPRIITA)*." (Wruck, 2004)

Samples of the pertinent sections of provincial and federal environmental statutes are found in Appendix 1.

4 Foundation Policies and Procedures With Respect to Management of Creative Sentencing Payments

As the number of creative sentencing award payments increased in the late 1990s, the Board of the then Habitat Conservation Trust Fund adopted policies and procedures to manage and invest them in suitable conservation projects. At the time, the Fund was considered a sister organization of the Ministry of Environment and part of government.

4.1 Award Revenue

Revenue received from the court and disbursements for project investments were tracked in a separate paper-based excel formatted financial reporting system with information derived from a unique file for each court award that housed any background information about the offense, the prosecution and the direction of the court.

The revenue from creative sentencing was tracked as a separate account and the balance was included in the Fund's conservative investment portfolio. Annual earned interest from the account was assigned to general operations and not to the award account or individual awards in the account.

4.2 Investment of Creative Sentencing Awards in Conservation Projects

It was Fund policy that the proceeds of creative sentencing would be accepted for remedial or rehabilitation activities on habitats and/or populations of animals or other conservation activities that were consistent with its purposes. The location of the offense and the wording of the judgment were to be used to help guide the selection of acceptable projects.

Until 2007, three general categories of proceeds were identified in the policy and these were accounted for in the procedures used to select project investments:

- **Explicit Awards to Parties** Monies provided in trust but the court named the parties that were to receive monies and described the conservation activities to be undertaken.

In 1999, the judgment against Imperial Oil read: "Three separate amounts of \$10,000 each to the Centennial High School Salmon Project, Burrard Inlet Marine Enhancement Society and the Port Moody Ecological Society for projects that enhance marine life in Burrard Inlet and the conservation and protection of fish and fish habitat". Project investments by HCTF were bound by the exactness of the judgment wording. Such awards were categorized as "restricted".

- **Awards with an Implied Ministry of Environment Role in the Design and/or Delivery of Project Investments.** Monies provided in trust where the recipients of awards were not named, but because Ministry of Environment staff was intimately involved in the investigation and prosecution and the wording of the judgment was quite specific, staff assumed they might have a role in the design of any project investments of awards.

The Chevron judgment and award of \$89,936 in 1997 and the resulting Skeena Steelhead Project (6-78) is an example ("fisheries conservation and enhancement in the Skeena watershed area"). The Fund had some freedom to direct project investments but these awards were still considered "restricted"; and

- **Awards Without an Implied Role of the Ministry of Environment in the Design and/or Delivery of Project Investments.** These were monies provided in trust where the recipients of awards were not named and the wording of the judgment was so broad as to exclude any assumption by Ministry of Environment staff might have a role in the design and/or delivery of any conservation project investments.

The Ewos Canada award in 2000 is an example where the judgment read "to support fish and wildlife projects around the province." Also included in this category were many judgments where the court did not specify the purpose of the award. These were considered "unrestricted" and provided HCTF with a great deal of freedom to direct investments to conservation projects.

In cases where the wording of the creative sentencing award allowed a range of activities, it was HCTF policy to encourage the Regional Manager, Fish and Wildlife and Regional Enforcement Manager of the Ministry of Environment to work with staff and non-government groups to submit project proposals for investments in conservation that reflected the impact of the offence and embraced the spirit of the creative sentence.

Indeed, it was policy that any project proposals to invest the proceeds of creative sentencing were to be approved by both Managers prior to consideration by the Board of the Foundation. This procedure was designed to promote collaboration to inform project investments while recognizing the invaluable contributions of the Conservation Officer Service in investigating offences and advising Crown Counsels. This procedure worked well with major awards but was found to be administratively complicated when dealing with a large number of minor awards.

Like all project proposals, those designed to access the proceeds of creative sentencing followed the regular application format and rules and were subject to the Fund's transparent four-part, science-based, peer reviewed technical evaluation process.

There were issues that sometimes complicated matching awards with project investments:

- Many awards were very small and many would have to be combined to support a decent sized project;
- Some offenses occurred in one region of the province but were prosecuted in the region where the violator resided;
- The use of many of the smaller awards was not specified by the court; and
- The wording of the court judgment was sometimes too restrictive or specific in nature. This made finding a conservation project to "fit" the intent of the award rather challenging. And, asking the court to consider a variance in an order or to issue a new order was considered time consuming.

In 2007, amendments to the **Wildlife Act** created a new not-for-profit organization—the Habitat Conservation Trust Foundation to succeed the Habitat Conservation Trust Fund. The Foundation was no longer a government entity. This new status eliminated any oversight and approvals from Ministry of Environment staff with respect to the design and recommendation of conservation projects associated with "restricted" awards.

On reviewing the growing portfolio of awards, the Board of the new Foundation agreed to retain the intent of most of its operating policies but to modify procedures to deal with a growing number of awards where the court had not specified the scope of conservation investments. These were considered "unrestricted". A new policy was adopted where staff was instructed to apply the balance of the "unrestricted" awards at year's end to as many projects as possible in the next year's budget cycle.

In the first year of this new policy, 24 of the projects approved for 2008-09 were funded, in whole or in part, from 93 awards that were “unrestricted”. Over \$364,000 was invested and the locations of individual projects were matched to creative sentencing awards in regions where the offences had occurred. At least one project in every region received funding in that year and the balance of “unrestricted” awards remaining was less than 1% of the total payments received for the 1993-2009 period.

5 Characteristics Of Creative Sentencing Awards

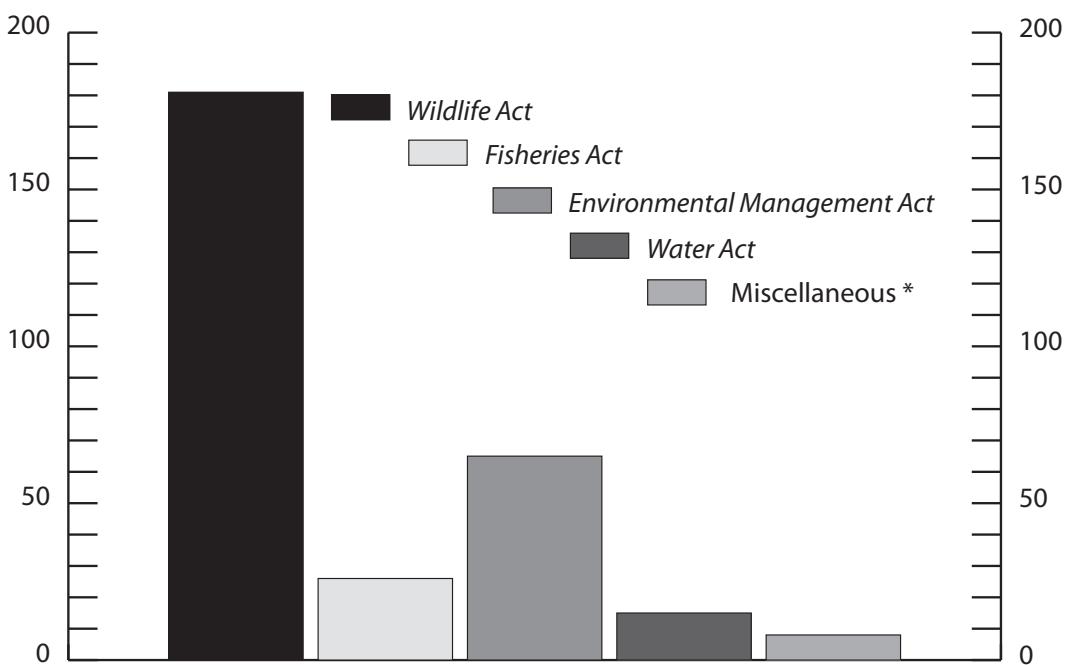
The Habitat Conservation Trust Foundation received the first award from creative sentencing in 1993. Since that time, an additional 294 awards were received to March 31, 2009 with a total value in excess of \$2.6 million.

5.1 Award Revenue Paid to the Foundation

The analysis of award payment data found that:

- In the 1993-2009 period, sixty-one percent (61%) of the number of creative sentencing awards originated from prosecutions under the *Wildlife Act*, 22% under the *Environmental Management Act* and its predecessor, the *Waste Management Act* while awards under the provisions of the *Fisheries Act* and *Water Act* accounted for 9% and 5% respectively. Awards from miscellaneous and unspecified statutes accounted for 3%. (Figures 1 and 2.)
- The annual number of awards received ranged from 1 to 4 in the early years but, by 2000-2001, the number of awards received was about 20 or more a year. (Figure 3.)
- In the last 5 years (2004-2009), the number of awards increased to 20-36 per year.
- It should be noted that several prosecutions included offences under more than one statute.
- Awards ranged in size from \$150 to \$148,000 and averaged almost \$10,000. Generally, awards under the provisions of the *Environmental Management Act* (and formerly the *Waste Management Act*) were larger than awards under the provisions of the other statutes. (Figures 1 and 2.)
- Prosecutions in the Lower Mainland Region resulted in the highest number of total awards (33%) and highest value of awards (38%). Table 1 lists awards by region of the province and Table 2 identifies awards by statute by region.

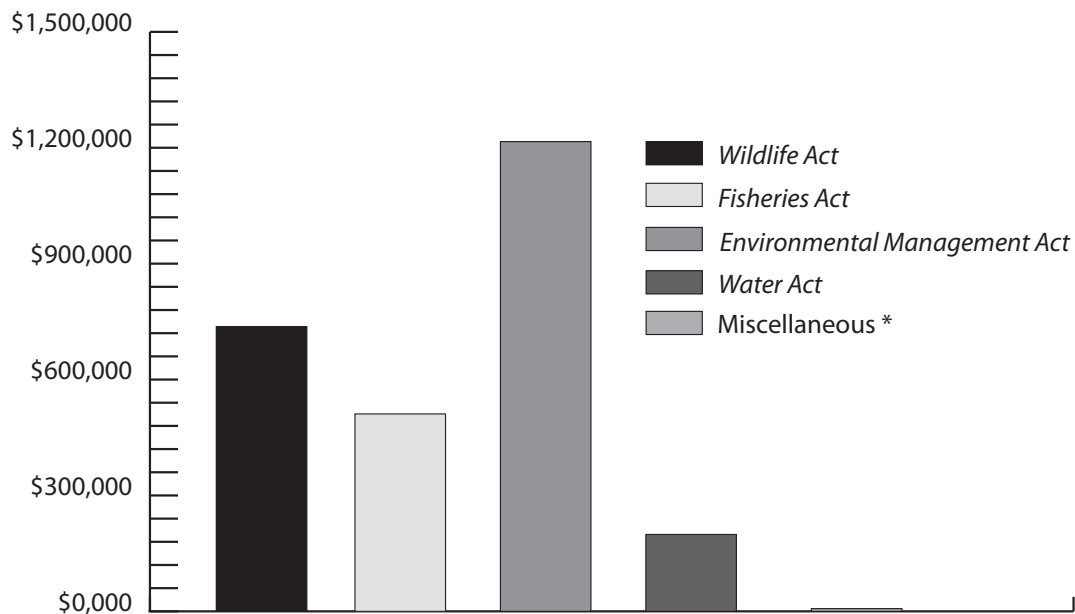
Figure 1: NUMBER OF CREATIVE SENTENCING AWARDS (BY STATUTE) RECEIVED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993–2009



N = 295

* Miscellaneous includes five awards where incomplete information was provided to indicate the statute used in the judgment; two donations from out of court settlements and one award under the Wild Animal and Plant Protection Regulations of the *Inter-Provincial Trade Act*.

Figure 2: VALUE OF CREATIVE SENTENCING AWARDS (BY STATUTE) RECEIVED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993–2009



N = \$2,670,500

* Miscellaneous includes five awards where incomplete information was provided to indicate the statute used in the judgment; two donations from out of court settlements and one award under the Wild Animal and Plant Protection Regulations of the *Inter-Provincial Trade Act*.

5.2 Revenue Issues

The dollar value of creative sentencing that the court directed to the Foundation varied from year to year. The court order usually specified the compensation payment schedule. Options were either:

- immediate payment in full; or
- payment by schedule over time.

Violators “complied” with judgments in one of four ways:

- immediate payment of total amount;
- complete payment over time;
- partial payment; and/or
- no payment (non-compliance)

In the review period, the compliance rate for the “on time” payment of awards to the Foundation was over 80%. The value of the unpaid awards was almost \$500,000.

Over the past few years, the Foundation, in cooperation with Provincial Government Conservation Officers and staff of the Attorney General’s Office, has invested time and resources into improving various aspects of the creative sentencing award process. In particular, the Foundation has strived to:

- improve systems and protocols around communications and notification of awards to ensure all payments due are identified, recorded and tracked;
- enhance electronic tracking systems to allow for more efficient and timely access to data on the awards that the Foundation has been charged with administering, and to make this data available to the Conservation Officer Service and the legal system; and
- establish collections procedures to collect on outstanding awards.

Ultimately, through these efforts, the Foundation hopes to increase the compliance rate of offenders for the payment of such awards and recognize the expertise and dedication of the Conservation Officers in their work to ensure that there are meaningful consequences for those guilty of environmental infractions.

While the Foundation was the body responsible for the administration and management of the proceeds of creative sentencing, there are several crucial partners that helped ensure that awards related to environmental prosecutions were made available for investment in the appropriate conservation and mitigation work. These partners include the Conservation Officer Service and other staff of the Ministry

of Environment, local court registries, Crown Counsels, and other staff with the Ministry of the Attorney General.

6 Characteristics Of Investments In Conservation Projects Using Creative Sentencing Awards

6.1 Investments in Conservation Projects by the Foundation Using Award Revenue

The analysis of the investment of creative sentencing awards in conservation projects found that:

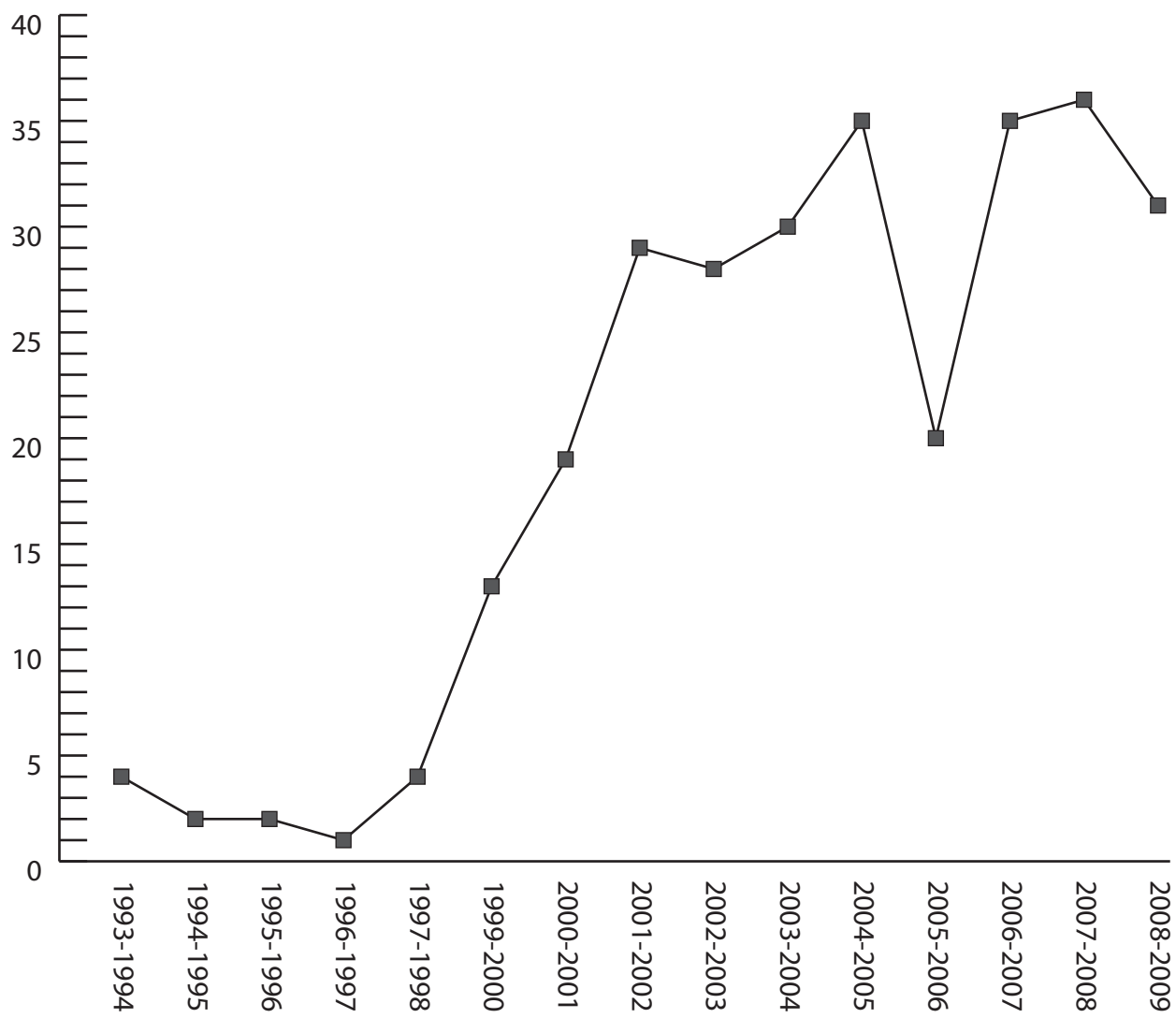
- \$1.3 million from 165 awards was invested in 70 unique conservation projects;
- Project investments using creative sentencing awards were made in all regions of the province;
- 60 % of the total number of investments was made using awards from the Wildlife Act;
- 41 % of the total value of investments was made using awards the *Waste Management Act* and its successor, the *Environmental Management Act*;
- Project investments in the Lower Mainland Region utilized the highest number of total awards (38%) and highest value of awards (42.5%). Table 3 lists investments by region while Table 4 describes investments by statute by region.
- In the last 5 years, almost \$850,000 was invested in 47 conservation projects using revenue from 80 awards. To demonstrate the Foundation's flexibility in matching "unrestricted" awards with conservation projects, 17 project investments were funded, in whole or in part, by a single award and 27 projects were funded by more than one award. In other cases, some awards were applied to more than one project.
- The number of conservation projects to benefit from creative sentencing awards has ranged from 3 to 24 per year and the total annual value of investments of awards in such projects has ranged from \$74,000 to over \$360,000.
- While the Foundation was the body responsible for the administration and management of the proceeds of creative sentencing, the proponents who designed, arranged partnership funding, completed and evaluated the "on the ground" activities are important partners to ensure that project investments reflected both the direction of the court and the objectives of the Foundation.
- From all sources of revenue that is allocated through the standard technical evaluation process, projects submitted by the staff of the Ministry of Environment account for about 70% of the annual value.

Table 1: REGIONAL DISTRIBUTION OF THE NUMBER AND VALUE OF CREATIVE SENTENCING AWARDS RECEIVED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993-2009				
REGION	Number of Awards	% of Total Awards	\$ Value of Awards	% of Total Value
Vancouver Island	17	6	262,000	10
Lower Mainland	97	33	1,009,500	38
Thompson-Nicola	20	7	73,500	3
Kootenay	11	4	38,000	1
Cariboo	16	5	127,500	5
Skeena	36	12	341,500	13
Omineca-Peace	77	26	688,500	26
Okanagan	18	6	128,500	5
Miscellaneous *	3	1	2,000	<1
Total	295	100	2,670,500	100
* Miscellaneous includes an award where incomplete information was provided; a donation from an out of court settlement and an award under the Wild Animal and Plant Protection Regulations on the <i>Inter-Provincial Trade Act</i> .				

Table 2 REGIONAL DISTRIBUTION OF CREATIVE SENTENCING AWARDS RECEIVED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993-2009 (BY STATUTE)					
REGION	Statute	Number of Awards	% of Regional Number	\$ Value of Awards	% of Regional Value
Vancouver Island (1)	<i>Wildlife Act</i>	6	35	27,000	10
	<i>Fisheries Act</i>	1	6	2,000	<1
	<i>Environmental Management Act</i>	10	59	233,500	89
Total		17	100	261,500	100
Lower Mainland (2)	<i>Wildlife Act</i>	39	40	126,000	12
	<i>Fisheries Act</i>	13	13	220,000	22
	<i>Environmental Management Act</i>	41	42	633,500	63
	<i>Water Act</i>	4	4	28,000	3
	Miscellaneous	1	1	2,000	<1
Total		97	100	1,009,500	100
Thompson-Nicola (3)	<i>Wildlife Act</i>	18	90	47,000	64
	<i>Fisheries Act</i>	1	5	20,000	27
	<i>Environmental Management Act</i>	1	5	6,500	9
Total		20	100	73,500	100
Kootenay (4)	<i>Wildlife Act</i>	8	73	27,000	71
	<i>Fisheries Act</i>	1	9	500	1
	<i>Water Act</i>	2	18	10,500	28
Total		11	100	38,000	100
Cariboo (5)	<i>Wildlife Act</i>	12	75	60,500	48
	<i>Fisheries Act</i>	2	12	62,500	49
	<i>Environmental Management Act</i>	2	12.5	4,500	6
Total		16	100	127,500	100

Table 2 REGIONAL DISTRIBUTION OF CREATIVE SENTENCING AWARDS RECEIVED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993-2009 (BY STATUTE)					
REGION	Statute	Number of Awards	% of Regional Number	\$ Value of Awards	% of Regional Value
Skeena (6)	<i>Wildlife Act</i>	29	80.5	162,500	48
	<i>Fisheries Act</i>	2	5.5	93,000	27
	<i>Environmental Management Act</i>	4	11	85,000	25
	Miscellaneous	1	3	500	<1
Total		36	100	341,500	100
Omenineca-Peace (7)	<i>Wildlife Act</i>	63	82	265,500	39
	<i>Fisheries Act</i>	4	5	94,000	14
	<i>Environmental Management Act</i>	4	5	180,000	26
	<i>Water Act</i>	4	5	147,000	21
	Miscellaneous	2	3	1,500	<1
Total		77	100	688,500	100
Okanagan (8)	<i>Wildlife Act</i>	6	33	22,000	17
	<i>Fisheries Act</i>	2	11	19,000	15
	<i>Environmental Management Act</i>	4	22	73,000	57
	<i>Water Act</i>	5	28	13,500	11
	Miscellaneous	1	6	1,000	<1
Total		18	100	128,500	100
Miscellaneous (No Record of Region)		3	6	2,000	100
Provincial Total		295	100	2,670,500	100

Figure 3: NUMBER OF CREATIVE SENTENCING AWARDS RECEIVED OVER TIME BY THE HABITAT CONVERSATION TRUST FOUNDATION, 1993-2009



N = 292 (no year data for 3 awards)

Figure 4: NUMBER OF CREATIVE SENTENCING AWARDS (BY STATUTE)
INVESTED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993–2009

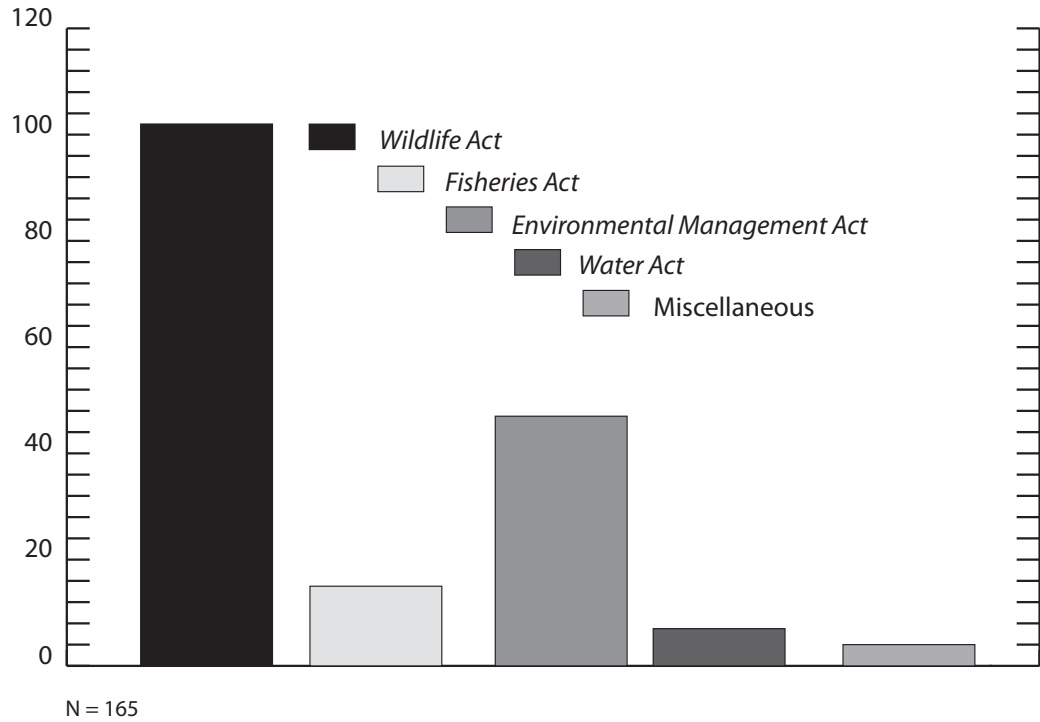


Figure 5: VALUE OF CREATIVE SENTENCING AWARDS (BY STATUTE)
INVESTED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993–2009

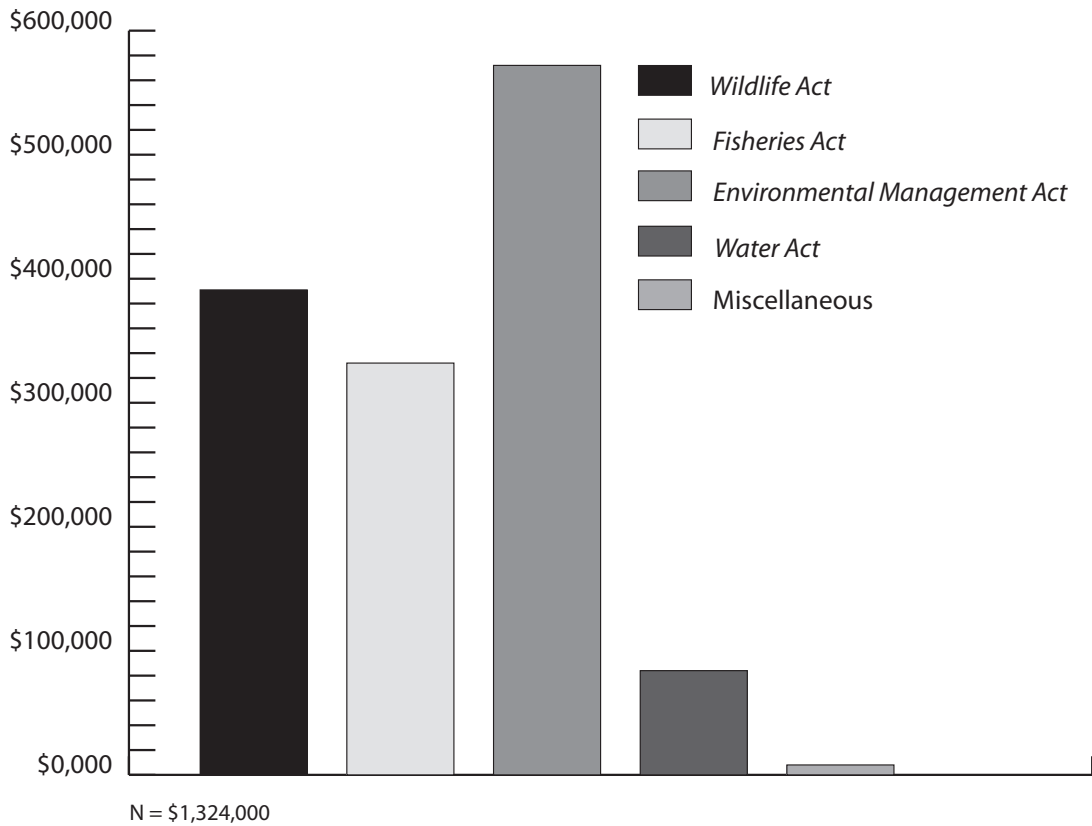


Table 3: REGIONAL DISTRIBUTION OF THE NUMBER AND VALUE OF CREATIVE SENTENCING AWARDS INVESTED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993-2009				
REGION	Number of Awards	% of Total Awards	\$ Value of Awards	% of Total Value
Vancouver Island	13	8	166,500	13
Lower Mainland	63	38	563,500	42.5
Thompson-Nicola	7	4	15,000	1
Kootenay	6	3.5	16,000	1
Cariboo	6	3.5	73,000	5.5
Skeena	11	7	179,000	13.5
Omineca-Peace	48	29	257,000	19
Okanagan	11	7	54,000	4
Total	165	100	1,324,000	100

Table 4: REGIONAL DISTRIBUTION OF CREATIVE SENTENCING AWARDS INVESTED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993-2009 (BY STATUTE)					
REGION	Statute	Number of Awards	% of Regional Number	\$ Value of Awards	% of Regional Value
Vancouver Island (1)	<i>Wildlife Act</i>	5	38.5	27,500	16.5
	<i>Environmental Management Act</i>	8	61.5	139,000	83.5
Total		13	100	166,500	100
Lower Mainland (2)	<i>Wildlife Act</i>	26	41	87,500	16
	<i>Fisheries Act</i>	5	8	92,000	16
	<i>Environmental Management Act</i>	27	43	354,000	63
	<i>Water Act</i>	4	6	28,000	5
	Miscellaneous	1	1	2,000	<1
Total		63	100	563,500	100
Thompson-Nicola (3)	<i>Wildlife Act</i>	7	87.5	15,000	100
Total		8	100	19,000	100
Kootenay (4)	<i>Wildlife Act</i>	5	83	6,000	32
	<i>Water Act</i>	1	17	10,000	68
Total		6	100	16,000	100
Cariboo (5)	<i>Wildlife Act</i>	3	50	46,000	63
	<i>Fisheries Act</i>	1	17	22,500	31
	<i>Environmental Management Act</i>	2	33	4,500	6
Total		6	100	73,000	100

Table 4: REGIONAL DISTRIBUTION OF CREATIVE SENTENCING AWARDS INVESTED BY THE HABITAT CONSERVATION TRUST FOUNDATION, 1993-2009 (BY STATUTE)

REGION	Statute	Number of Awards	% of Regional Number	\$ Value of Awards	% of Regional Value
Skeena (6)	<i>Wildlife Act</i>	8	73	61,500	34
	<i>Fisheries Act</i>	2	18	93,000	52
	<i>Environmental Management Act</i>	1	9	24,500	14
Total		11	100	179,000	100
Omineca-Peace (7)	<i>Wildlife Act</i>	41	85	127,000	49
	<i>Fisheries Act</i>	3	6	82,000	32
	<i>Environmental Management Act</i>	2	4	3,500	1
	<i>Water Act</i>	1	2	44,000	17
	Miscellaneous	1	2	<500	<1
Total		48	100	257,000	100
Okanagan (8)	<i>Wildlife Act</i>	4	36	16,000	30
	<i>Fisheries Act</i>	2	18	14,000	26
	<i>Environmental Management Act</i>	3	27	21,000	39
	<i>Water Act</i>	1	9	2,000	4
	Miscellaneous	1	9	1,000	2
Total		11	100	54,000	100
Provincial Totals of Awards Invested		165	100	1,324,000	100

6.2 Investment Issues

Consistent with the Foundation's policies and procedures noted in Section 4 above, the unique nature of the creative sentencing process in BC ensures that awards under the relevant environmental legislation contribute to general conservation, remedial or rehabilitation activities that are consistent with the nature and location of the infraction.

In Alberta, Powell (2001) listed the following criteria for any environmental projects to be recommended as a creative sentencing measure:

- "fit within legal parameters;
- improve the environment or reduce level of risk to the public;
- benefit the citizens of Alberta;
- be related to the offense;
- be as local as possible to the area where the offense occurred;
- be technically feasible;
- result in concrete tangible and measurable result;
- be cost-effective; and
- be other than sound business practice of the offender."

In British Columbia, most if not all of those criteria have been built into the policies of the Habitat Conservation Trust Foundation. The Foundation is a proposal-driven organization that invites proposals from anyone who has a good idea that seeks to benefit fish, wildlife and habitat in British Columbia. All proposals are scrutinized by teams of technical experts, and the very best proposals receive funding. Since its inception in 1981, the Foundation and its predecessors have invested over \$120 million in over 2000 conservation projects across BC.

When the Foundation reviewed conservation project proposals for investing the proceeds of creative sentencing, it considered two major questions:

- Was the proposal consistent with the direction of the court? and
- Was the proposal technically feasible and consistent with the purposes of the Habitat Conservation Trust Foundation?

If a proposal passed those two important tests, the Foundation was very flexible in linking project investments to the proceeds of creative sentencing awards. Approved projects were fully funded or partially funded by a single award or fully funded or partially funded by two or more awards.

Projects that received funding were categorized as either “new” or “existing” with a multi-year implementation horizon. In addition to monies from the proceeds of creative sentencing, project leaders attracted support from the Foundation’s licence surcharge account, other sources of money (governments, corporations and foundations), and in kind contributions from a variety of sources in the community.

As previously mentioned, until 2007, the proceeds of creative sentencing were received in one fiscal year, but the investment of that award was often deferred one or more years until a suitable project proposal was received and was approved as a project. There was usually a lag of one or more years between the time when an award was received and the time when a project investment was made. This applied to both “restricted” and “unrestricted” awards.

After 2007, the policy remained unchanged for “restricted” awards. But for “unrestricted” awards, a new policy was adopted where staff was instructed to apply the balance of the “unrestricted” awards at year’s end to as many approved projects as possible in the next year’s budget cycle.

7 Case Studies of Awards and Related Investments in Conservation Projects

The general aspects of creative sentencing are described in Appendix 2. The independence of the investigation, prosecution and investment activities is clearly demonstrated by the business mapping approach.

Consistent with that approach, the following three case studies briefly describe specific details of three prosecutions and the management of the creative sentencing awards that were subsequently ordered by the court.

7.1 Cranberry River Steelhead (Project 6-180)

The Meziadin Lake area in the Nass Watershed provides important habitats for salmon, trout and char. It is also a popular area for recreational angling and is a key area for food, social, ceremonial and commercial fishing for First Nations. The Meziadin and other Nass Watersheds also have very high habitat values for Grizzly Bears.

An investigation led by Conservation Officer Wayne Campbell alleged that, between August 25th and September 12th, 1997, at or near Meziadin Lake, BC Tel had introduced harmful petroleum hydrocarbons into the environment contrary to Section 3(2) of the **Waste Management Act**. Charges were laid and, in February 2000, representatives of the company responsible appeared before a Judge at the Smithers Court Registry.



Consistent with Section 54(7) of the **Waste Management Act**, the court sentenced the company to pay the Habitat Conservation Trust Foundation \$25,000 “for the purpose of promoting the conservation and protection of fish and fish habitat.”

The court also ordered the monies to be spent gathering life history information on Cranberry River steelhead, and to use any surplus monies to promote the conservation and protection of fish and fish habitat in and around the Meziadin Lake and River. These purposes were to be implemented under the direction of an identified employee of the BC Ministry of Environment.

The Foundation received the money from the defendant by the January 28, 2000 due date. Then, during the regular 2005-06 project proposal intake, it received a submission from the Ministry of Environment in Skeena Region to access the award and invest in a project that was consistent with direction of the court. Following peer review by the Fisheries Technical Review Committee and the Board, the Nass River Tributary Stock Assessment proposal was approved as a project.

Using accepted radio telemetry methodologies, 106 radio tags were applied to wild summer-run steelhead captured in the fish wheels operated by the Nisga’a Lisims Government in the lower Nass River. The tagged steelhead were tracked throughout their fall and winter migrations and to their natal watersheds in the spring of 2006. Information from this telemetry study is used to inform fish managers with regard to the protection, assessment and management of Nass steelhead populations and their habitats. The work was implemented between April 1, 2005 to March 31, 2007 in partnership with Nisga’a Lisims Government’s (NLG) Fisheries Program and with additional financial support from the Pacific Salmon Commission. The entire project budget was \$46,700: \$25,000 of which was from this court award. Additional equipment and labour were contributed “in kind” by both the Ministry of Environment and NLG.

This project investment was briefly reported in the 2006-2007 Annual Review of the Foundation.

A full project final report, with the technical details of the inventory activities, is found in the Project File (Nass River Tributary Steelhead Stock Assessment, 6-180) at the Victoria office of the Habitat Conservation Trust Foundation.

7.2 Port Alice Bear Conservation (Project 1-221)

The Port Alice area in the Vancouver Island Region is the gateway to the west coast and is known for its variety of wildlife and fish species. In the nearby sheltering forest, marbled murrelets nest in the deep moss that enshrouds the thick branches of spruce. Herds of Roosevelt elk graze in lush, green understories, while black bears forage in berry-laden bushes. There are impressive runs of Chinook and Coho Salmon on the Marble River, which lies 13 km west of Hwy 19. Nearby Alice, Victoria, and Kathleen Lakes offer good cutthroat trout and Dolly Varden fishing.

Following an investigation led by Conservation Officer Ken Fujino, it was alleged that on May 12, 1997 at or near Port Alice, Western Pulp Inc. had introduced harmful chlorine gas into the environment contrary to

Section 3(2) of the **Waste Management Act**. Charges were laid and, in September 1998, representatives of the company appeared before a Judge at the Port Hardy Court Registry.

Consistent with Section 89(4) of the **Offence Act**, the court accepted a joint submission from the parties and ordered a suspended sentence on the condition that the company pay the Habitat Conservation Trust Foundation \$50,000 for “environmental work in the Port Alice area of Vancouver Island”.



The Foundation received the money from the court within days of the ruling. Then, during the regular 2000-01 project proposal intake, it received a submission from the Village of Port Alice to access the award and invest in a project that was consistent with direction of the court. Following peer review by the Foundation’s Wildlife Technical Review Committee and its Board of Directors, the Port Alice Bear Conservation proposal was approved as a project.

This project spanned 2 fiscal years and, under the direction of a local Bear Committee and in consultation with Conservation Officers, reduced bear-human contact by designing, manufacturing and placing 29 bear-proof bins in street and park areas of frequent bear-human contact in the Village of Port Alice. Two “Bear-Aware” open houses attracted 10% of the village population while over 200 school children were provided age-specific educational material.

Bear-human conflicts and the destruction of garbage conditioned bears in the Village decreased dramatically as a result of this \$50,000 investment and complementary investment of \$7,400 in cash by the Village.

This project investment was briefly reported in the 2000-2003 Project Review Report of the Foundation.

A full project final report, with the details of the Committee’s activities, is found in the project file (Port Alice Bear Conservation, 1-221) at the Victoria office of the Habitat Conservation Trust Foundation.

7.3 Cariboo Region Badger (Project 0-295) and Mountain Caribou Snowmobile Monitoring (Project 5- 172)

British Columbians over the age of 14 wishing to legally hunt in the province must pass a knowledge and skills test as part of the Conservation and Outdoor Recreation Education program (CORE). The goal of the CORE program is to ensure that prospective hunters meet acceptable standards of knowledge and skill for safe and ethical participation in hunting recreation. Trained independent instructors offer CORE courses and students who complete those courses are tested by certified CORE Examiners.

In July 1996, the CORE test was given to four students by an examiner at his home in 100 Mile House. Conservation Officers, led by Colin Nivison, acted on tips from three of the students leading to an undercover investigation in 1998.

Charges of knowingly falsifying information on a record were laid pursuant to the **Wildlife Act**. In January of 2000, the defendant pled guilty during a preliminary hearing and the court imposed a \$10,000 fine and ordered that \$35,000 be paid to the Habitat Conservation Trust Foundation for “wildlife enhancement projects in the Cariboo Region.” The judgment was the maximum allowed under the **Wildlife Act** for charges of this nature and, at the time, was the largest ever assessed to an individual on a single charge.

In response to its annual call for project proposals for the 2002-03 period, HCTF received a submission from the Cariboo Region of the Ministry of Water, Land and Air Protection to access \$15,000 of the award and invest in a project that was consistent with direction of the court. Following peer review by the Foundation’s Wildlife Technical Review Committee and its Board of Directors, the Mountain Caribou Snowmobile Monitoring proposal was approved as a project.

Mountain Caribou have been identified as threatened by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) and are red listed in the province. There were concerns about the potential impact of backcountry activities in displacing caribou populations from their winter ranges. To address this issue, local snowmobile clubs in Quesnel, 100 Mile House and Williams Lake entered into a voluntary two year agreement with the provincial government to reduce and restrict use of areas or zones of certain key caribou wintering areas.

A four year monitoring plan to record baseline data of snow machine use within critical and sensitive caribou winter habitats began in December of 2002 and was concluded in April 2006 for the Quesnel Highland study area. During the course of the four years a total of 708 snow machines and 241 caribou were observed. Compliance within voluntary closure zones varied from 98.2% to 78.3%, with a four year average of 92.5%. On twenty-one occasions caribou activity and snow machine activity were recorded within 500m of each other. The majority of these potential caribou-snow machine interactions occurred in zone C, on Cameron Ridge and in the Grain Creek drainage (10 instances). Interactions were recorded on six occasions in Zone D and 5 times in Zone A. In 2006 an analysis involving probability and intensity of snow machine use within caution zones was conducted. Probability of snow machine use on a given weekend day was 80% or greater for Bald Mountain, Yanks Peak, Roundtop Mountain, Eureka Ridge and Mica Mountain. Snow machine intensities of greater than 10 snow machines per survey day were recorded for Bald Mountain, Yanks Peak, and Mica Mountain.

Total expenditures on this project were \$12,151 with “in kind” contributions from the Ministry of Water, Land and Air Protection, Ministry of Sustainable Development and Quesnel Highlands Management Society.

During the 2003-2004 HCTF project proposal intake, a submission was received from the Ministry of Water, Land and Air Protection to access a further \$20,000 of the award and invest in a project that was consistent with direction of the court. Following peer review by the Foundation's Wildlife Technical Review Committee and its Board of Directors, the Cariboo Region Badger proposal was approved as a project.

The Cariboo Region Badger Project was initiated to determine the distribution and abundance of badgers at the northern periphery of their range to support recovery activity for the species. To 2007, 736 burrow locations were identified and 101 observations of animals reported by the public were recorded. In 2006, 188 shed and snagged hair samples were collected from 67 burrow locations and 4 tissue samples from road killed badgers. Researchers assigned 108 samples to individual badgers using DNA fingerprinting. A total of 51 badgers (23 females, 28 males) were identified in the Cariboo Region, including 2 litters (5 kits in 2005, and 4 kits in 2006). The estimated badger population (Jolly-Seber model) in the study area was 24.5 badgers (95% CI = 18.3 – 34.1) in 2004, and 32.3 badgers (95% CI = 26.6 – 44.5) in 2005. The minimum number of badgers alive in the population in 2006 was 26. Estimated areas used by individual badgers can be as small as 0.3 km² and as large as 1280 km². Nine badgers have died since 2003, and at least 8 of these were confirmed road kills.

Recovery activities have included the proposals Wildlife Habitat Areas (WHAs) for designation under the ***Forest and Range Practices Act***, treatment of WHAs and First Nations reserve lands to reduce forest encroachment/ingrowth, development of best management practices to maintain/improve habitat, and posting 5 badger road crossing signs on Highway 97 to warn motorists of high potential road kill areas.

The project budget for 2003-04 was \$27,608 with \$20,000 from the award and \$7,608 from the Forest Investment Account (Ministry of Forests). The Ministry of Water, Land and Air Protection, the Ministry of Forest and Range, the BC Conservation Foundation (BC Conservation Corps) and the University College of the Cariboo were "in kind" contributors. Funding for the project in subsequent years was also received from Environment Canada's Habitat Stewardship Program.

Project leader Roger Packham is grateful for the initial financial support for the project.

"It is important to recognize that HCTF funding was a catalyst for the long term badger project that continues to this day—eight field seasons later. We now have designated 21 badger WHAs which encompass 1944 ha of critical habitat. We believe there is 2-3 times the number of badgers in the Cariboo than we had when the Foundation provided the seed funding for the project and, as a result, we are well on our way to meeting our recovery objectives- having a healthy population of badgers in the Cariboo. Additionally, we have a much greater understanding of badger ecology which helps us protect badgers and their habitat...again as a result of the HCTF court award funding."

Building on the initial work, there are currently two research projects in progress—one to address the mortality of badgers on roads and one to explore their winter ecology (never before studied in North America).

These project investments were briefly reported in several Project Review Reports of the Foundation.

More detailed information about both projects is found in the project files (Mountain Caribou Snowmobile Monitoring, 5-172 and Cariboo Region Badger, 0-295) at the Victoria office of the Habitat Conservation Trust Foundation and at http://www.env.gov.bc.ca/cariboo/env_stewardship/ecosystems/reports/SnowCaribou4yrfinal.pdf and http://www.badgers.bc.ca/pubs/Cariboo_Badger_2007.

8 Profiles of Awards and Project Investments

Appendix 3 provides short profiles of a sample of the 165 creative sentencing awards used to fund 70 unique conservation projects of the Habitat Conservation Trust Foundation in the 1993-2009 period.

On the creative sentencing awards side, the profiles indicate that creative sentence payments were associated with a wide range of offenses and that the court provided a wide range of wording to help guide the Foundation in implementing the most appropriate conservation investments.

On the conservation project side, the profiles describe a wide range of conservation investments that reflect both the direction of the court, the goals and objectives of the Habitat Conservation Trust Foundation and the opportunities to invest in the unparalleled biological diversity of British Columbia.



9 Recommendations

The collection and analysis of considerable information for this project has led to the following recommendations to the Habitat Conservation Trust Foundation:

- Conservation Officers and Crown Counsels should be made aware of the need to provide the Foundation with complete and timely information about court decisions involving creative sentencing awards. The content of individual award files for the review period is quite varied. Some files are complete while others contain the most basic information. Far too often, important information is lacking. For example, some documents referred to an “Information” but that material had not been provided for the file. Sometimes, HCTF staff becomes aware of the details of awards long after the case is closed and information is impossible to obtain;
- The Foundation has recently developed an improved electronic tracking system for the receipt of award revenue and project investments. This will greatly improve the sharing of and access to

financial information. It is assumed that these data will be used to produce regular reports to inform Conservation Officers and Crown Counsels about the status of awards payments;

- The wording of the court judgments is sometimes too restrictive or specific in nature. This makes finding a conservation project to “fit” the intent of the award rather challenging. The Foundation should consider working with Conservation Officers and Crown Counsels to develop some sample wordings of orders to help minimize this problem and improve opportunities to invest “restricted” awards;
- A few “unspecified” awards were directed by Foundation staff to projects in regions other than where the offense occurred. This is contrary to the Foundation’s policy. Steps should be taken to eliminate clerical errors in recording the regional location of awards and in assigning “unspecified” awards to projects;
- The Foundation should consider mechanisms to automate the production of “Court Award” profiles that summarize both award revenue and project investment activities. A first step might be to modify the reporting policy to require project leaders to provide a four-sentence description of the final results of each project and a listing of project partners. This information in electronic format could also assist in the production of the Foundation’s annual and other reports; and
- The Foundation should consider regular summary/trend reports, such as this one, to demonstrate its accountability in the administration and management of creative sentencing awards. A five-year time line is suggested.

10 Acknowledgements

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Appendix 1 **Samples of Provisions for Creative Sentencing of Environmental Statutes Used in British Columbia**

1. *WILDLIFE ACT* (RSBC 1996) CHAPTER 488

Creative Sentencing

84.1 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment or any wildlife, endangered species or threatened species, that resulted or may result from the commission of the offence;

(c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;

(d) directing the person to perform community service;

(e) directing the person to pay an amount of money the court considers appropriate to

(i) [Repealed 2002-7-24.]

(ii) the trustee under Part 3 for inclusion in the trust property, as that term is defined in section 118, or

(iii) the Grizzly Bear Trust Fund established and administered by the government;

(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

(g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;

(h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

(2) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.

(3) If

(a) an order under this section or section 84.2 directs a person to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (2) of this section, the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

(4) A person who contravenes an order under this section or section 84.2 commits an offence and is liable to the penalties provided for the offence in relation to which the order was made.

Part 3 — Habitat Conservation Trust

Definitions

118 In this Part:

society means the Habitat Conservation Trust Foundation, a society incorporated under the ***Society Act***;

trust property means the property referred to in section 119;

trust purposes means the purposes, referred to in section 122 (1) (a) to (d), for which the trust property may be used;

trustee means the society.

Trust property

119 (1) The trust property consists of the following:

(a) all of the assets that were included in the Habitat Conservation Trust Fund immediately before the coming into force of this section;

(b) surcharges collected under this Act and paid to the trustee under section 120;

(c) revenue derived by the trustee from

(i) fundraising, or

(ii) the disposition of promotional, educational or other materials, goods, programs or services under section 122 (2) (j);

(d) property received by the trustee by

(i) gift, donation or bequest, or

(ii) disposition of any trust property;

(e) property acquired by the trustee under

(i) an enactment or court order, or

(ii) without limiting subparagraph (i), subsections (3) and (4);

(f) revenue derived from lands administered by the minister for the benefit of fish or wildlife and paid to the trustee under section 120;

(g) property received by the trustee as contributions

(i) under an appropriation or a requisition, or

(ii) from the government of Canada, municipalities or others;

(h) any interest and other income earned by the trustee on the trust property.

(2) The trustee may accept, as part of the trust property, gifts, donations or bequests that are subject to conditions, unless the conditions are inconsistent with section 122.

(3) A reference in any record, including, without limitation, in any security agreement, commercial paper, lease, licence, permit, contract, instrument, document, certificate, will or other testamentary document, court order or enactment, to the Habitat Conservation Trust Fund, or to the trustee of the Habitat Conservation Trust Fund, is deemed to be a reference to the trustee.

(4) Without limiting subsection (3),

(a) any payment or transfer of property that must be made to the Habitat Conservation Trust Fund, or to the trustee of the Habitat Conservation Trust Fund, under any of the records referred to in subsection (3) must be made to the trustee, and

(b) any payment or transfer of property that may be made to the Habitat Conservation Trust Fund, or to the trustee of the Habitat Conservation Trust Fund, under any of the records referred to in subsection (3) may be made to the trustee.

2. ENVIRONMENTAL MANAGEMENT ACT (SBC 2003) CHAPTER 53

Additional sentencing orders

127 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;
- (b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;
- (c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;
- (d) directing the person to perform community service;
- (e) directing the person to pay an amount of money the court considers appropriate to the trustee under Part 3 of the *Wildlife Act* for inclusion in the trust property, as that term is defined in section 118 of that Act;
- (f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;
- (g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
- (h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
- (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

(2) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.

(3) If

(a) an order under this section or section 128 [variation of section 127 orders] directs a person to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (2) of this section, the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

3. *WATER ACT* (RSBC) CHAPTER 483

Creative sentencing

95 (1) If a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to the environment that resulted or may result from the commission of the offence;

(c) directing the person to pay the government an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the government as a result of the commission of the offence;

(d) directing the person to perform community service;

(e) directing the person to pay an amount of money the court considers appropriate to the trustee under Part 3 of the *Wildlife Act* for inclusion in the trust property, as that term is defined in section 118 of that Act;

(f) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

- (g) directing the person to submit to the minister, on application by the minister within 3 years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;
 - (h) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;
 - (i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.
- (2) The person against whom an order under subsection (1) was made, or the Attorney General, may apply to the court that made the original order for a variation.
- (3) Before hearing an application under subsection (2), the court may order the applicant to give notice of the application in accordance with the directions of the court.
- (4) On an application under subsection (2), if the court considers variation appropriate because of a change in the circumstances, the court may make an order doing one or more of the following:
- (a) changing the original order or any conditions specified in it;
 - (b) relieving the person against whom the order was made absolutely or partially from compliance with all or part of the original order;
 - (c) reducing the period for which the original order is to remain in effect;
 - (d) extending the period for which the original order is to remain in effect, subject to the limit that this extension must not be longer than one year.
- (5) If an application under subsection (2) has been heard by a court, no other application may be made in respect of the original order, or the order as varied under subsection (2), except with leave of the court.
- (6) If a person fails to comply with an order referred to in subsection (1) (h) directing the person to publish the facts relating to the commission of an offence, the minister may publish those facts and recover the costs of publication from the person.
- (7) If
- (a) an order under this section directs a person to pay an amount of money as compensation or for any other purpose, or

(b) the minister incurs publication costs under subsection (6), the amount and any interest payable on that amount constitute a debt due to the government and may be recovered as such in any court of competent jurisdiction.

Breach of creative sentencing order

96 (1) A person who contravenes an order under section 95 [*creative sentencing*] commits an offence.

(2) A person who commits an offence under subsection (1) is liable on conviction to the penalties provided for the offence in relation to which the order under section 95 was made.

4. FISHERIES ACT (CANADA) (R.S., 1985, c. F-14)

Orders of court

79.2 Where a person is convicted of an offence under this Act, in addition to any punishment imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing any one or more of the following prohibitions, directions or requirements:

(a) prohibiting the person from doing any act or engaging in any activity that may, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the person to take any action the court considers appropriate to remedy or avoid any harm to any fish, fishery or fish habitat that resulted or may result from the commission of the offence;

(c) directing the person to publish, in any manner the court considers appropriate, the facts relating to the commission of the offence;

(d) directing the person to pay the Minister an amount of money as compensation, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the commission of the offence;

(e) directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;

(f) directing the person to pay Her Majesty an amount of money the court considers appropriate for the purpose of promoting the proper management and control of fisheries or fish habitat or the conservation and protection of fish or fish habitat;

(g) directing the person to post a bond or pay into court an amount of money the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement mentioned in this section;

(h) directing the person to submit to the Minister, on application by the Minister within three years after the date of the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances; and

(i) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences under this Act.

1991, c. 1, s. 24.

5. *MIGRATORY BIRD CONVENTION ACT* (1994, c. 22)

Court order

16. (1) If a person or vessel is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(a) prohibiting the offender from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;

(b) directing the offender to take any action the court considers appropriate to remedy or avoid any harm to any migratory bird or nest that resulted or may result from the commission of the offence;

(b.1) directing the offender to have an environmental audit conducted by a person of a class specified by the court at the times specified by the court, and directing the offender to remedy any deficiencies revealed by the audit;

(c) directing the offender to publish, in a manner the court considers appropriate, the facts relating to the commission of the offence;

(d) directing the offender to pay the Minister or the government of a province compensation, in whole or in part, for the cost of any remedial or preventive action taken by or on behalf of the Minister or that government as a result of the commission of the offence;

(d.1) directing the offender to pay, in a manner specified by the court, an amount to enable research to be conducted into the protection of the migratory bird populations in respect of which the offence was committed;

(d.2) directing the offender to pay, in a manner specified by the court, an amount to an educational institution for scholarships for students enrolled in environmental studies;

(e) directing the offender to perform community service in accordance with any reasonable conditions specified in the order;

(f) directing the offender to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information about the offender's activities that the court considers appropriate in the circumstances;

(g) directing the offender to post a bond or pay into court an amount of money that the court considers appropriate to ensure compliance with any prohibition, direction or requirement under this section; and

(h) requiring the offender to comply with any other conditions that the court considers appropriate to secure the offender's good conduct and to prevent the offender from repeating the offence or committing other offences.

Appendix 2 **Business Mapping**

The Basic Steps in the Independent Prosecution of Environmental Offenders and the Investment of Creative Sentencing Awards Associated with Orders of the British Columbia Court.

Legal Phase

Party or Activity	Action
Defendant	Allegedly violated law(s)
Conservation Officers	<p>Investigate alleged violation(s)</p> <p>Conservation Officers are members of the Conservation Officer Service which is the enforcement program of the provincial Environment ministry established under section 106 of the Environmental Management Act. As such, these officers are tasked with providing a broad range of compliance and enforcement services under provincial and federal environmental legislation throughout the province including education, outreach, inspections and enforcement. Compliance is the primary objective and the Service works with many partners internal and external to government to meet its goals.</p> <p>Officers investigate alleged violations by gathering facts and searching for and securing evidence. Alleged offenses are categorized: minor offenses may be dealt with using ticketing provisions and information about major offences is provided to Crown counsels for review and a decision about possible prosecution</p>
Crown Counsel	<p>Independently determines prosecution and provides evidence to the court to support case.</p> <p>Crown counsels are prosecutors who work for BC’s prosecution service - the Criminal Justice Branch of the BC Ministry of Attorney General. The Criminal Justice Branch operates <u>independently of government</u> and within the justice system. They do not represent the government, the police or the victim of an offence. The courts have described the role of Crown counsel in Canada as a quasi-judicial function and a matter of significant public duty. In our system of justice, when a crime is committed against a victim, it is also a crime against our society as a whole. Therefore, prosecutors do not represent individual victims; they perform their function on behalf of the community.</p> <p>Once a defendant is served or notified of charges, a defence Counsel is retained. The rules of court in BC provide that each party must produce all of their documents and information to the other side. During this exchange of information, discussions may eventually include the notion of creative sentencing.</p>
Judiciary	Independently determines innocence or guilt and assesses appropriate sentencing provisions.

In advance of court date, examinations for discovery, interim orders and/or preliminary hearings may be required. The Provincial Court, a statutory court, hears matters under a wide variety of federal and provincial enactments including environmental laws. The judiciary is distinct from, and operates independently of, all other justice system participants, including all other branches of government.

Based on evidence provided, a Judge independently determines innocence or guilt and assesses the appropriate sentencing provisions which may include fines and creative sentencing provisions. The Habitat Conservation Trust Foundation is often named in the order as a recipient of creative sentencing payments.

Investment/Restorative Phase

Foundation staff	<p>Receives information about creative sentencing provisions and payment(s). Records awards in an electronic database, assigns unique tracking number, creates a paper file, and deposits proceeds as they are received in a special court award revenue account. Based on the wording of the order, staff designates awards as either “restricted” or “unrestricted”. Once appropriate permission has been granted by the legal system (in process), staff will initiate collections procedures on over-due court awards. Staff also provides information on the status of outstanding award payments to Conservation Officers.</p> <p>For “restricted awards”, potential proponents are encouraged to design conservation project proposals that address the direction of the court.</p> <p>For “unrestricted awards”, staff assigns such awards to appropriate projects in the region where the violation occurred, after the technical review and approval process has been completed.</p>
Proposal Development	<p>The proponent of a project outlines an issue or problem and uses the latest technical information to design a proposal that is consistent with the aims and objectives of the Foundation, and for “restricted awards”, the direction of the court.</p>
Proposal Acceptance	<p>The project proposal is received by Foundation, checked for completeness, assigned a unique number and a copy stored in a uniquely number paper file. If a request to access one or more creative sentencing awards is included in the proposal, Foundation records are checked to confirm that the proposal reflects the direction of the court.</p>
Peer Review	<p>The proposal is assigned to a qualified volunteer peer reviewer and the reviewer’s critique is recorded on a standardized paper form. The reviewer is not known to the proponent.</p>
Technical Committee	<p>The proposal and comments from the peer reviewer are sent to the appropriate technical review committee comprised of experienced staff of the Ministry of Environment and non-government members. The Committee reviews the proposal,</p>

peer reviewer's comments and rank the proposal. The committee also comments on technical issues that are provided to the Board and, eventually, to the proponent.

The committee deals with both new proposals and proposals for the continuation of existing multi- year projects. For previously approved projects, the progress of work to date and the rationale and plan for work in the upcoming year are examined.

Board of Directors

Comprised of representatives of contributors and scientists, the Board considers the recommendations of the technical committees, determines available funding, and evaluates proposals against Foundation priorities. Accepted proposals become projects.

Project Leader

Completes project and demonstrates accountability by providing annual reports and a final report to describe outcomes, recommendations, partners, and local outreach. Foundation staff reviews reports.

Foundation Staff

Reviews reports, undertakes spot evaluations of projects to examine technical and financial details and arranges theme- based evaluations of similar projects. As well, projects associated with creative sentencing awards are flagged in the annual and other reports of the Foundation.

External Audit


The court award account is included in the Foundation's annual independent financial audit.


Appendix 3


Sample Profiles of Creative Sentencing Awards

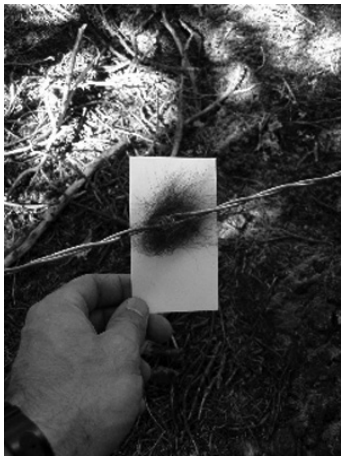
Managed by the Habitat Conservation Trust Foundation

1993 to 2009

Court Award ID	08109	
File #	H-352-20/WIL	
Court Date	February 09, 2000	
Defendant	Individual	
Conservation Officer	Lance Sundquist	
Crown Counsel	Jeffrey B. Johnston	
Registry	Colwood	
Statute	Section 3(2) of the <i>Waste Management Act</i>	
Offence	Introduced waste (dead salmon) into the environment	
Purpose of Settlement	Unspecified	
Amount Awarded	\$3,000	
Project Investment	Richards Creek Flow Augmentation, 2008-2009 (1-449)	
Investment Results	After consultations with local stakeholders, beaver dams were removed and the Crofton Lake dam was modified with the addition of piping to increase summer water flows in Richards Creek. With the release of 400 gallons per minute, noticeable improvements in the quality of existing rearing habitat for Coho Salmon Cutthroat Trout and steelhead were observed and the creation of 756 m ² of new rearing habitat was achieved.	
Investment Partners	BC Conservation Foundation (Living Rivers/Georgia Basin/Vancouver Island Program), District of North Cowichan, Fisheries and Oceans Canada and the Habitat Conservation Trust Foundation (Surcharge Account)	
Investment Amount	\$3,000 of a total project expenditure of \$25,680 with half of that total provided "in kind" by the District of North Cowichan and Fisheries and Oceans Canada	


Court Award ID	41789	
File #	H-352-20/MEI	
Court Date	March 01, 2001	
Defendant	Individual	
Conservation Officer	Special Investigations Unit	
Crown Counsel	Jim MacAulay	
Registry	Chilliwack	
Statute	Unspecified violation of the Wildlife Act (Section 12?) and Section 84.1(1) (e) (ii) of the Wildlife Act	
Offence	Unlawfully fishing for Sturgeon	
Purpose of Settlement	Conservation and protection of Sturgeon in the Fraser River and associated waters	
Amount Awarded	\$4,000	
Project Investment	Conservation of White Sturgeon in the Lower Fraser River, 2002-2003 (Project 2-197)	
Investment Results	The distribution, abundance, movement and habitat preferences of Fraser River White Sturgeon were determined building on data from several years of tagging and recapture activities. White Sturgeon is the largest freshwater fish species in Canada and is considered endangered.	
Investment Partners	Ministry of Water, Land and Air Protection, Fraser River Sturgeon Conservation Society, Lakahamen Band, and LGL Ltd	
Investment Amount	\$4,000	

Court Award ID	2221	
File #	H352-20/MOL	
Court Date	December 5, 2001	
Defendant	Individual	
Conservation Officer	Chris Doyle	
Crown Counsel	Ralph Keefer	
Registry	Squamish	
Statute	Section 44.1(e) of the <i>Water Act</i>	
Offence	Dug out a tributary to a creek providing habitat to a species of trout listed as being at risk	
Purpose of Settlement	Plan, implement and monitor future habitat restoration activities within the Phelix Creek watershed (under the direction of BC Government fisheries staff)	
Amount Awarded	\$2,000	
Project Investment	Birkenhead Bull Trout Spawner Assessment 2004-2005 (Project 2-271)	
Investment Results	The primary objective of the project was to continue to obtain information to help gauge progress in the restoration and conservation of the Bull Trout (char) of Birkenhead Lake after implementation of a catch and release fishing regulation in 2001. The long-term fisheries management objective is to re-build depressed stocks in Phelix Creek.	
Investment Partners	BC Ministry of Water, Land and Air Protection, N'Quatqua First Nation and Creekside Resources	
Investment Amount	\$2,000 of an overall project investment of \$10,000	


Court Award ID	80226	
File #	H-352-20/FRI	
Court Date	September 06, 2006	
Defendant	Individual	
Conservation Officer		
Crown Counsel	Jonathan Oliphant	
Registry	Kamloops	
Statute	Sections 26(1) (c) and 84.1(1) (e) (ii) of the <i>Wildlife Act</i>	
Offence	Killing a cow and calf moose at a time not within the open season	
Purpose of Settlement	Unspecified	
Amount Awarded	\$2,300	
Project Investment	Grizzly Bear Population Density, 2007-2008 (Project 0-315)	
Investment Results	Using noninvasive hair-snag techniques and DNA analyses, Grizzly Bear occurrence was systematically sampled across a 50,000 km ² area west of 100 Mile House over a period of 4 years. In 2007-2008 (Year 4), 1637 hair samples were collected at over 110 stations during 4 sessions and sent to the DNA lab. One sample was collected at 346 site/sessions while no hair was collected at 94 site/sessions.	
Investment Partners	BC Ministry of Environment, Alpine Wildlife Research, Wildlife Genetics International, All Relations Wildlife Research, BC Ministry of Forests and Range, Lillooet Grizzly Bear Working Group, Blackcomb Helicopters, BC Hydro's Bridge Coastal Restoration Program and the Habitat Conservation Trust Foundation (Surcharge Account)	
Investment Amount	\$2,300 of a total of \$8,600 from this and 2 other court awards as part of a total project investment of \$153,600	

Court Award ID	24329-1-T
File #	H-352-20/CLA
Court Date	April 9,2006
Defendants	Individual
Conservation Officer	
Crown Counsel	Carl Gren
Registry	Cranbrook
Statutes	Section 26 (1) (c) and Section 84.1 of the <i>Wildlife Act</i>
Offence	Unlawfully hunted wildlife
Purpose of Settlement	Unspecified
Amount Awarded	\$2,400
Project Investment	Lake Windermere Water Stewardship Project, 2008-2009 (Project 4-429)
Investment Results	The project emphasis was the protection and enhancement of the quality of Lake Windermere by means of inter-agency cooperation, scientific water quality monitoring and through public education and engagement. Work on 12 activities in the second year of the project included water sampling at 5 lake stations, 6 tributary stations, completion of fish and wildlife baseline assessments, hosting of a water workshop attended by over 300 participants, production and distribution of over 1000 pieces of information material, involvement in over 53 media articles, the creation of a community base funding committee and the recruitment of 25 volunteers.
Investment Partners	Wildsight, Columbia Basin Trust, Government of Canada, Panorama Foundation, Real Estate Foundation of BC, Regional District of East Kootenay, TD Friends of the Environment Fund, Unilever Canada, the Habitat Conservation Trust Foundation (Surcharge Account) and cash donations from local residents accounted for almost \$97,000 of the budget. In kind contributions in excess of \$49,000 were provided by the District of Invermere, BC Lake Stewardship Society, Canadian Columbia Inter-tribal Fisheries Commission, Fisheries and Oceans Canada, Interior Health, Canadian Cancer Society, Regional District of East Kootenay, the Ministry of Environment and community volunteers.
Investment Amount	\$2,400 as part of an investment of \$6,200 from this and 2 other awards for a total project investment of \$146,016

Court Award ID	28639
File #	H352-20/TEL
Court Date	February 17, 2006
Defendant	Individual
Conservation Officer	
Crown Counsel	Victor Galbraith
Registry	Quesnel
Statute	Sections 11 (1) (a), 82 (1) (d) and 96 (1) of the <i>Wildlife Act</i>
Offence	Hunting without a licence, knowingly made a false statement, and resisting or obstructing an Officer
Purpose of Settlement	Unspecified
Amount Awarded	\$900
Project Investment	Chilcotin Fisher Maternal Denning Study, 2008-2009 (Project 5-207)
Investment Results	Using radio telemetry on 24 fisher to identify important habitat elements, data indicated that the trees used a reproductive dens by fisher in the Chilcotin were smaller in diameter than reported elsewhere in western North America but usually the largest in the stand. The home range averaged 30.6 km ² for females and 166.4 km ² for males. Riparian areas are preferred so large aspen and spruce trees in these areas should be reserved from forest harvest operations.
Investment Partners	Davis Environmental Ltd., BC Ministry of Environment, Tolko Forest Products, The Forest Science Program and the Habitat Conservation Trust Foundation (Surcharge Account)
Investment Amount	\$900 of a total of \$12,400 from this and 4 other awards as part of a total project budget of \$54,964

Court Award ID	C07025	
File #	H352-20/BUM	
Court Date	May 5, 2000	
Defendant	Individual	
Conservation Officer	Murray Smith	
Crown Counsel	Ron Beram	
Registry	Prince George	
Statute	Sections 35(2) and 84.1 of the <i>Wildlife Act</i>	
Offence	Failure to make reasonable effort to retrieve wildlife	
Purpose of Settlement	Unspecified	
Amount Awarded	\$1,750	
Project Investment	Stone's Sheep Ram Habitat Use, Sexual Segregation, and Sightability, 2008-2009 (Project 7-349)	
Investment Results	<p>The objective of the Sulphur/8 Mile Project (S8MP) was to provide scientifically-defensible management guidelines for Stone's sheep, to meet oil and gas pre-tenure plan requirements in the Muskwa-Kechika Management Area.</p> <p>In 2005/06 - 2009/10, the S8MP assessed population demographics and trends, as well as habitat use and mortality rates of Stone's sheep ewes (females) to assess potential impacts of industrial development activities on Stone's sheep. Preliminary results showed significant data gaps with respect to Stone's sheep ram (male) demographics and habitat use.</p> <p>The purpose of the 3 year (2008/09 - 2010/11) HCTF-funded project was to identify habitat use by rams and spatio-temporal segregation from ewes as a basis for improving habitat protection and management, as well as for population estimation, modelling, and management. This was accomplished through resource selection function (RSF) habitat use analyses of location data from GPS collars fitted on 18 rams, comparative analyses with existing habitat use data for ewes, and mark-resight analyses to determine a sightability correction factor (SCF) for ram population estimates.</p> <p>Year 1 (2008/09) of this project included a mark-resight population census, 3 fixed-wing flights per month to assess the status of GPS collar functionality and status of collared sheep (alive or dead based on signals emitted by motion-sensitive collar components), helicopter support for collar recovery and site investigations as needed, and preliminary data analyses and reporting.</p>	

Investment Partners	This HCTF project built on a significant investment (\$1.4M) by stakeholders supporting S8MP research on ewes and initiation of ram studies (collar purchase and deployment) in 2007/08. The S8MP was led by Synergy Applied Ecology, the North Peace Stone's Sheep Sustainability Committee, and the North Peace Stone's Sheep Science Advisory Committee, with funding from BC Integrated Land Management Bureau; BC Ministry of Energy, Mines, and Petroleum Resources Environmental Policy Program; BC Ministry of Environment; BC Oil and Gas Commission Science and Community Environmental Knowledge Fund; BP Canada Energy Company; Dawson Creek Sportsman's Club; Habitat Conservation Trust Foundation (Surcharge Account); Muskwa-Kechika Trust Fund and Advisory Board; North Peace Rod and Gun Club; Northeast BC Wildlife Fund; Northern BC Guides Association; TransCanada Pipelines Ltd. and the Wild Sheep Society of BC.
Investment Amount	\$1,750 of a total of \$58,568 from this and 17 other awards as part of a project investment of \$419,445 in 2008-09

Court Award ID	38285	
File #	H352-20/HEL	
Court Date	March 15, 2004	
Defendant	Individual	
Conservation Officer		
Crown Counsel	Stansfield	
Registry	Vernon	
Statute	Unspecified Sections and Section 84.1 of the <i>Wildlife Act</i>	
Offence	Unspecified	
Purpose of Settlement	Unspecified	
Amount Awarded	\$900	
Project Investment	Okanagan River Restoration Initiative-Fisheries, 2008-2009 (Project 8-319)	
Investment Results	To help restore a critical reach of one of Canada’s most endangered rivers that had been extensively channelized for flood protection in the 1950s, 1 km of dyke was removed and a replacement dyke, 8m wide at the crest, was constructed at a set back location some distance from the existing channel to allow the river to reconnect with its historic floodplain. This restoration work will produce 15,000 m ² of high quality complex spawning and rearing habitat to stimulate a much higher egg to fry survival for trout and salmon because it is designed to significantly reduce silt deposition. The Okanagan River supports populations of rainbow trout, steelhead, kokanee and sockeye salmon. The improvement of the salmon population is of particular interest to US hydro power producers because much of the spawning habitat for this endangered stock occurs in Canada.	
Investment Partners	BC Ministry of Environment, Habitat Conservation Trust Foundation (Surcharge Account), Okanagan Region Wildlife Heritage Fund Society, Douglas Public Utility District, Grant Public Utility District and Chelan County Public Utility District	
Investment Amount	\$900 of a total of \$17,250 from this and 8 other awards as part of a total project investment of \$75,000.This investment has led to a commitment of \$822,000 (US) from American utility districts for the next stages of the project.	

INVESTING IN CONSERVATION WITH REVENUE FROM CREATIVE SENTENCING

THE CHARACTERISTICS OF THE COURT AWARD PORTFOLIO MANAGED
BY THE BC HABITAT CONSERVATION TRUST FOUNDATION, 1993–2009

