

Endangered Species Protection in Alberta: “Where’s the Beef?”

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ABSTRACT

The rapid pace of species extinctions globally has been called one of the most pressing environmental issues facing humanity. Canada has made national and international commitments to protect biodiversity, particularly endangered species. Canada’s response to these commitments is complicated by a divided constitutional jurisdiction over the environment. The federal, provincial, and territorial governments have endeavoured to find a solution to this shared responsibility by executing the National Accord for the Protection of Species at Risk (National Accord.) In it, each jurisdiction commits to take specific steps to implement legal protection for endangered species. Alberta’s answer to endangered species protection has been to enact amendments to the Wildlife Act. Although passed before the National Accord was signed, these amendments are all Alberta intends to do to fulfil its responsibilities. This paper will analyse those provisions and the extent to which they meet Alberta’s commitments under the National Accord, using specific examples of species and habitats. It concludes that the broad discretionary powers given to Alberta’s Minister of Environmental Protection and the nature of the process provide little guarantee of protection for endangered species.

Key words: Alberta, legislation, National Accord.

Many conservation biologists agree that the Earth is facing a mass extinction episode. It threatens to be as comprehensive as the one about 65 million years ago that wiped out not only the dinosaurs, but 76% of all species. The average rate of extinction is only about 1 species in any major group every million years. Some scientists believe the planet’s transformation could see the extinction of 50–66% of all species before it is over (Quammen 1998).

Although other parts of the world, particularly those with rain forests, are the focus of most popular concern, Canada also is faced with an increasing number of species at risk. Currently, about 300 Canadian species are identified as being at risk of extinction by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

The causes of the current extinction crisis are well known. Extensive habitat loss to agriculture, urban development, and resource extraction is the primary cause of species loss. Contributing factors are habitat fragmentation, overhunting and overfishing, invasive species, and the secondary consequences of other extinctions (Quammen 1998). In other words, the efforts of just 1 species to satisfy its growing

population’s demands for goods, services, and activities are appropriating most of the Earth’s resources and threaten the very existence of the balance of the planet’s creatures.

The Canadian government and the provinces have made some noble commitments to take action to halt or reverse the trend toward species extinction. Canada was one of the first signatories to the global Convention on Biological Diversity. This document requires countries to take various steps to identify and preserve threatened species, habitats, and ecosystems.

In Canada, the effort to reduce factors leading to species extinctions is complicated by a divided constitutional jurisdiction. Provincial governments have exclusive jurisdiction to manage “resources” within their boundaries, which traditionally has been interpreted to include wildlife resources. The constitution gives the federal government exclusive jurisdiction over migratory birds and fisheries. The federal government has no express power to legislate regarding the environment or other resources.

However, the Supreme Court of Canada has determined that the environment is such a broad subject area that both federal and provincial levels of government can pass laws for environmental protection (Oldman Dam case, Supreme Court of Canada; Canada 1992). Further, the federal government has a residual power to make laws for the “peace, order, and good government of Canada.” Many scholars have interpreted this to give the federal government authority to

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regulate national emergencies or issues possessing a “national dimension,” such as species in danger of extinction (Gibson 1996).

Even though the federal government appears to have sufficient constitutional power to enact a law protecting endangered species everywhere in Canada, political sensitivities about federal/provincial relations have made its approach to endangered species protection timid. At a time when a strong federal presence would antagonize Quebec, other provinces have asserted their own right to make endangered species laws within their boundaries.

The federal, provincial, and territorial governments have tried to find a solution to the mutually beneficial premise of shared responsibility by executing the National Accord for the Protection of Species at Risk (National Accord). In it, each jurisdiction commits to take specific steps to implement legal protection for endangered species.

Alberta’s answer to endangered species protection has been to enact amendments to the Wildlife Act. Although passed before the National Accord was signed, these amendments are all Alberta intends to do to fulfil its responsibilities (Alberta Environmental Protection staff, 1996, pers. comm.). This paper will analyze those provisions and the extent to which they meet Alberta’s commitments under the National Accord. It concludes that the broad discretionary powers given to Alberta’s Minister of Environmental Protection and the process itself provide little protection for endangered species. Alberta’s efforts fail to fulfil its responsibilities under the National Accord.

NATIONAL ACCORD FOR THE PROTECTION OF SPECIES AT RISK

The National Accord was signed by the federal, provincial, and territorial governments on September 27, 1996. In accordance with its provisions, each level of government has committed to, among other things, establish complementary legislation and programs that provide effective protection of species at risk and:

- provide an independent process for assessing the status of species at risk;
- legally designate species as threatened or endangered;
- provide immediate legal protection for threatened or endangered species;
- provide protection for the habitat of threatened or endangered species;
- provide for the development of recovery plans within 1 year for endangered species and 2 years for threatened species; and
- consider the needs of species at risk as part of environmental assessment processes.

Since the execution of the Accord, the federal and provincial governments have struggled with a legislative formula that will

Table 1. Species on the Red List in Alberta

swift fox
burrowing owl
piping plover
Canadian toad
northern leopard frog
wood bison
peregrine falcon
whooping crane
great plains toad

both meet their requirements while preserving each jurisdiction’s sense of constitutional propriety. The federal government’s effort, Bill C-65, was both too weak to satisfy conservationists and too prescriptive for many provincial governments, landowners, and resource managers. It expired when Parliament dissolved in June 1997. Since then, consultations have revealed even less of an appetite among private property, resource, and agricultural constituents for prescriptive federal legislation. Another version of a federal bill, anticipated to be even weaker than C-65, is expected in the spring of 1999.

ENDANGERED SPECIES PROTECTION IN ALBERTA

Alberta does not have “stand alone” legislation to protect endangered species. Rather, endangered species currently are managed in 2 ways: (1) the nonbinding list, *The Status of Alberta Wildlife*, and (2) endangered species provisions in Alberta’s Wildlife Act.

The *Status of Alberta Wildlife* list provides information only; it has no regulatory protection for species at risk (Alberta Ministry of Environmental Protection 1992). It also assesses only mammals, birds, amphibians, and reptiles; the status of fish, plants, and insects in Alberta is not officially reviewed. Under the latest *Status of Alberta Wildlife* list, 29 species are at risk in Alberta: 9 species are Red-listed (they are at risk of dying out in Alberta; Table 1), and 20 animals are Blue-listed (they may be at risk of dying out in Alberta; Table 2).

ALBERTA’S WILDLIFE ACT

Alberta’s regulatory efforts to preserve endangered species are found in its Wildlife Act (Alberta 1984). The statute primarily is directed toward managing wildlife populations. It classifies wildlife as game and nongame species, and contains the regulations for hunting, trapping, and possessing wildlife.

The Wildlife Act also contains limited provisions regarding the listing of and protection for endangered animals (but not plants or other life). Eleven animals are listed under the Wildlife Act. The swift fox, plains bison, whooping crane, and peregrine falcon are listed as endangered. The woodland

Table 2. Species on the Blue List in Alberta

grizzly bear
northern long-eared bat
Ord's kangaroo rat
red-tailed chipmunk
woodland caribou
wolverine
bay-breasted warbler
black-throated green warbler
Cape May warbler
ferruginous hawk
long-billed curlew
sage grouse
short-eared owl
Sprague's pipit
trumpeter swan
plains spadefoot toad
spotted frog
prairie rattlesnake
short-horned lizard
western hognose snake

caribou, barren-ground caribou, northern leopard frog, trumpeter swan, ferruginous hawk, burrowing owl, and piping plover are listed as threatened.

The Wildlife Act prohibits hunting, harassing, capturing, injuring, or killing and disturbing the nests or dens of endangered animals (but not endangered invertebrates or fish) which are listed in a schedule to the Act. If convicted of these acts, a person is liable to a fine of up to \$100,000 or 6 months in jail.

The Wildlife Act also allows the Minister to make regulations protecting and restoring wildlife habitat, including that of endangered species. However, these provisions have never been used and there is no habitat in Alberta that is legally protected for the benefit of endangered species. In fact, the provincial government insists that Alberta's attempt at a protected areas strategy, Special Places 2000, is not about protecting wildlife, but only about representing landscapes.

In 1996, a few months before it signed the National Accord, the Alberta government amended the Wildlife Act to add the following provisions dealing with endangered species:

- the Minister *must* establish a committee known as the "Endangered Species Conservation Committee";
- the Committee is to *advise* the Minister about endangered species and make *recommendations* about:
 - the preparation and adoption of recovery plans;
 - species that should be established as endangered; and
 - endangered species and biodiversity conservation;
- the Committee *must* establish an independent scientific committee to *recommend* species that should be established as endangered;
- endangered species recovery plans *may* include population

goals and the identification of critical habitats and strategies for population recovery. [*italics added*].

Thus, the only things that *must* happen are the establishment of the committee and the scientific subcommittee. The listing of species, the implementation of recovery plans, and the identification (and protection) of critical habitats, each of which are an obligation under the National Accord, are entirely at the discretion of the Minister of Environmental Protection.

The Endangered Species Conservation Committee includes representatives from the Alberta Cattle Commission, the Canadian Association of Petroleum Producers, the Alberta Forest Products Association, the Western Stockgrower's Association, the Alberta Fish and Game Association, the Alberta Native Plant Council, the Calgary Zoological Society, the Alberta Chapter of the Wildlife Society, First Nations, academic representatives, and the Alberta Conservation Association. No major conservation advocacy group sits on the committee. This is in part because the only group to be invited, the Federation of Alberta Naturalists, has refused to participate until the process is adequately funded. In the 2.5 years since these amendments were passed, the committee has met only twice and has not yet recommended any species to be designated as endangered. The scientific committee is still being established.

WHERE'S THE BEEF?

Alberta government officials maintain the province is taking a "cooperative approach" that will engage landowners and those managing Crown lands in the recovery process voluntarily (Alberta Environmental Protection staff, 1999, pers. comm.). However, the process is a painfully slow way of dealing with what is generally understood to be a deepening crisis.

Further, voluntary efforts to achieve environmental protection goals will be effective only if legislation is in place to authorize the voluntary efforts, monitor their effectiveness, and enable a regulatory response if voluntary initiatives are failing. The Alberta approach does none of these things.

The insistence of the Alberta government and others that the voluntary cooperation of landowners and managers is the only way to implement protection for endangered species is puzzling. Why do the interests of ranchers and others responsible for managing land take priority over those of species teetering on the brink of extinction? Some of those who say that they want only voluntary programs to protect endangered species habitats also say they will kill endangered species and destroy their habitat if habitat protection laws are passed. What kind of noble caretakers are these?

These kinds of threats would not be tolerated in other societal spheres. Imagine if we relied on "voluntary cooperation" for the payment of taxes, for compliance with zoning bylaws, or for maintaining safe highway speeds. These are all

regulatory schemes that affect how we deal with private property; as law-abiding citizens we accept them. Should we expect no less for regulations to deal with the crisis of species extinctions?

As a society, we make lofty promises to protect the environment. But we do a dismal job of bringing that commitment to the ground and making some of the difficult trade-offs needed if we are to have a truly sustainable future. Governments and industries support protected areas, but only if they don't prevent resource extraction. We seem to think that we can have our cake and eat it to. We want to protect species and habitats without having to give up any of our consumptive activities. Protecting endangered species is one of the highest issues on the public and government agendas, yet we choose not to stop the activities that are causing the extinction crisis.

CONCLUSION

Albertans want endangered species to be protected. The government has said it will protect them and meet the requirements of the National Accord. Yet, this is not being done. The effectiveness of Alberta's approach depends on the political will of the Minister of Environmental Protection and his Cabinet colleagues. This approach does not ensure that every effort is made to secure the recovery of endangered species. Rather, it guarantees trade-offs will continue to be made that favour economic development and private interests over species protection.

Endangered species legislation is the mechanism of last resort when our other efforts—sustainable management of the landscape, protected core habitats, and voluntary initiatives—have failed. Given the severity of the crisis, and given that endangered species legislation applies only when all

other efforts have failed, this legislation must be strong and clear so that the causes of a population's decline can be addressed quickly and effectively. Sometimes, such actions will mean some people or companies will be restricted on their own or Crown land. In such rare cases, a process for compensation is appropriate.

Our attitude toward the other creatures with which we share this beautiful planet is the ultimate test of our success as a species. Are we so arrogant that we are unwilling to temper our own behaviour so that other species can survive? Or are we generous and intelligent enough to curb our activities so the survival of all species, including our own, can be assured?

Alberta's endangered species provisions do not demonstrate that commitment. They leave the critical decisions of listing, habitat protection, and recovery plan implementation to the realm of political will where economic considerations can prevail. I think we can, and must, do better than that.

LITERATURE CITED

- Alberta. 1984. Wildlife Act. S.A. 1984, c.W-9.1.
Alberta Ministry of Environmental Protection. 1996. The status of Alberta wildlife. Nat. Resour. Serv., Wildl. Manage. Div., Edmonton, AB. 44pp.
Canada. 1992. Friends of the Oldman River Society v. Canada (Minister of Transport and Minister of Fisheries and Oceans). 132 N.R. 321 (S.C.C.)
Gibson, D. 1996. Endangered species and the Parliament of Canada, a constitutional opinion. Univ. Alberta, Edmonton, AB. Prepared for the Sierra Legal Defence Fund. 25pp.
Quammen, D. 1998. Planet of weeds. Harper's Magazine; October 1998.