



“AT LEAST IT’S A START?”: THE LEGISLATIVE FOUNDATIONS FOR PROTECTING SPECIES AT RISK IN ALBERTA

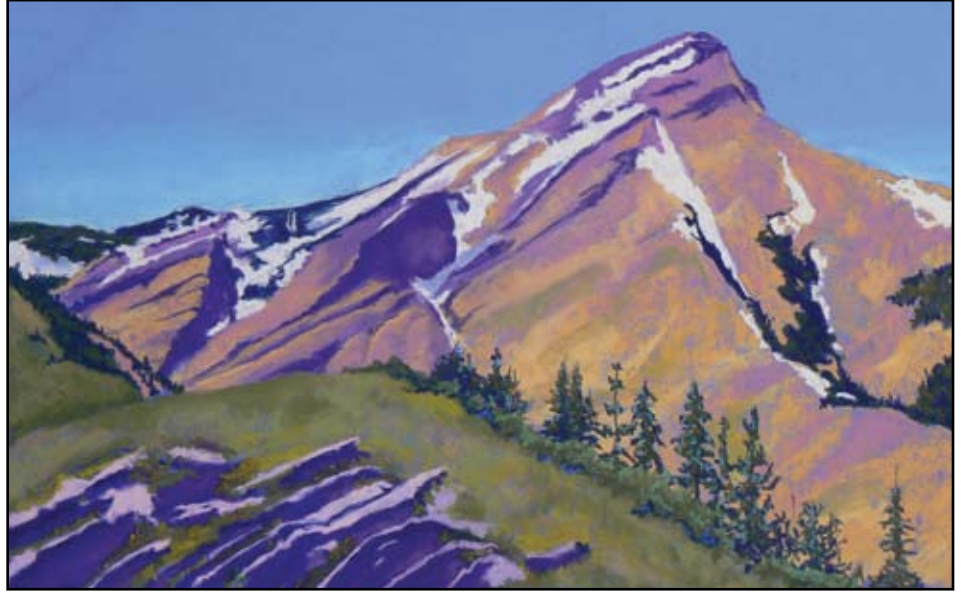
By Nigel Douglas, AWA Conservation Specialist

Endangered or threatened? Blue list or red list? At risk or “May be at risk” is one provincial designation? Endangered species designations come in a bewildering variety of shapes and sizes, both federal and provincial, and it can be a complicated process to sort through the different monikers and work out what it all actually means for the species themselves.

When it comes to environmental issues, the line between federal and provincial responsibility is a fuzzy one; essentially, the environment is an area of shared jurisdiction. The provincial government manages wildlife as it does other resources it “owns.” But wildlife cannot exist without habitat, and whose responsibility is it to manage or restore wildlife habitat? The province manages the two thirds of Alberta that is public land and has some jurisdiction over private land. But on federal land, such as national parks and military reserves, the federal government is responsible for managing endangered species and other species to “prevent them from becoming at risk.”

Federal Endangered Species Listing

Federally, endangered species are listed under the *Species at Risk Act* (SARA) passed in 2003 to “prevent Canadian indigenous species, subspecies, and distinct populations from becoming extirpated or extinct, to provide for the recovery of endangered or threatened species, and encourage the management of other species to prevent them from becoming at risk.” On federally-administered land – National Parks and Military Reserves for example – the provisions of SARA have some strength, including “prohibitions that make it an offence to kill, harm, harass, capture, take, possess, collect, buy, sell or trade an individual of a species listed in Schedule 1 of SARA as endangered, threatened or extirpated.” But protection of the habitat



Victoria Peak 16” x 25” Soft Pastel © JEAN SHEPPARD

that supports the species is much more vague.

According to the SARA website, www.sararegistry.gc.ca, COSEWIC is an advisory body to the federal government, charged with making “the accurate designations based on the best available scientific and Aboriginal traditional or community knowledge.” The federal government then decides whether or not to act on these recommendations: “It is up to elected government officials, who are politically accountable, to turn those designations into law.”

The listing process follows a series of steps:

COSEWIC

- Uses its Candidate List to prioritize which species require assessment,
- produces wildlife status reports for each species and assigns it to a risk category (extirpated, endangered, threatened, a special concern).

The relevant Minister (Environment or Fisheries and Oceans):

- issues a response statement, including timelines for future action,
- commissions suitable experts to produce a Recovery Strategy, a planning document that identifies what

needs to be done to arrest or reverse the decline of a species,

- writes an Action Plan which identifies specific actions needed to help in the species recovery.

As soon as a species is listed people are prohibited from killing or harming members of the species as well as from destroying a “residence.” Nothing though is said about protecting the species’ broader habitat, its neighbourhood.

Listing a species can be a maddeningly long process. COSEWIC recommended listing the westslope cutthroat trout, for example, as *threatened* in 2006 – the politicians have yet to ratify that listing.

Recovery strategies or management plans are required to be developed for all listed species. Further to this their critical habitat should be identified and protected. In practice, although recovery strategies have gone some way to identifying critical habitat for endangered species, very little has been done to protect that vital habitat. On February 14, 2008, Alberta Wilderness Association and five other conservation groups launched a lawsuit against federal Minister of Environment John Baird for refusing to

identify and protect critical greater sage-grouse habitat (see page 18).

Another of SARA's great weaknesses rests in its minimal territorial scope. First, it only applies to public, not private, lands. Second, SARA does not apply to most public lands south of the northern territories; the vast majority of Crown land in southern Canada is provincial land. The Government of Canada's website optimistically, or naively, proclaims: "In most situations, provincial laws will provide protection for critical habitat." Sadly, Alberta does not appear to be one of those cases! Although SARA gives the federal Minister of the Environment the power to "attempt to enter into agreements with provinces and territories for them to develop recovery strategies for species under their management responsibility," in practice there is little political will in Ottawa to try to force provinces to take their protection duty seriously.

Alberta Endangered Species Listing

If provinces are expected to take the lead role, what has Alberta done? The province's 1982 *Fish and Wildlife Policy for Alberta*, refers to wildlife somewhat clinically as a "replenishable Crown resource." Currently, Alberta is one of only two provinces that do not have specialized endangered species legislation. Instead, endangered species are managed through the 1984 *Wildlife Act*, an act initially designed to govern hunting and other allocation of the wildlife "resource." Subsequent changes to the *Wildlife Act* have allowed for some degree of endangered species management, but the act is ill suited to this added, much different, role. For example a Minister can make regulations protecting and restoring wildlife habitat, including that of an endangered species, but these provisions have never been used and there is no habitat in Alberta that is legally protected for the benefit of endangered species.

Alberta's "serious" involvement in species at risk began in 1996, when the provincial government signed on to the *Accord for the Protection of Species at Risk in Canada*. In 1997 the province produced its own *Strategy for the Management of Species at Risk in Alberta* which laid out the process for species status evaluation, listing and recovery planning.

A key tool potentially could be Alberta's multi-stakeholder Endangered Species Conservation Committee (ESCC). Taking advice from its Scientific Subcommittee, the ESCC reviews the status of wildlife in the province and recommends suitable designation to the Minister of Sustainable Resource Development (SRD). Species may be listed as endangered, threatened or extirpated (extinct). This is the theory at least; in practice it does not often work like this. The ESCC's 2002 recommendation that the grizzly bear should be designated a *threatened* species has been ignored by successive SRD Ministers. Political will is certainly no stronger on the species-at-risk file in Edmonton than it is in Ottawa.

This divorce of management decisions from scientific assessments of species' health is a recurring theme in wildlife management in Alberta. Scientists on the Scientific Subcommittee make their recommendations to the multi-stakeholder ESCC, which includes representatives from the forestry, oil and gas and irrigation sectors. This committee then makes recommendations to the Minister, who then may or may not decide to set up a multi-stakeholder recovery team. If established a team has two years to produce a recovery plan, which may or may not be adopted and implemented. Judging by the grizzly's treatment each step of the process takes us further away from the essential scientific conclusion – the species is threatened. Eight years after the grizzly bear was first recommended for listing, not a single hectare of grizzly bear habitat has been protected, even as the population estimates have plummeted from 1,000 bears to less than 400.

While the potential of the ESCC has been damaged by ministerial discretion

and the absence of political will its potential also has suffered from the Committee's lack of public input and accountability. The committee meets in private; most of the committee's website has not been updated since January 2007; no committee reports have been posted since June 2006.

Taken together both federal and Alberta endangered species laws do little to recognize how important protecting habitat is to the preservation and recovery of those species; without change this crucial flaw is likely to be fatal.

A Glimmer of Hope?

Alberta is clearly in dire need of its own specific endangered species legislation. I like to think the recent government report, *Alberta's Strategy for the Management of Species at Risk (2009-2014)*, recognizes this. It commits to "(e)xamine whether a provincial Species at Risk Act would enhance the current legal measures provided under Alberta's *Wildlife Act* to accommodate species at risk in the province." If nothing else, this could enable the Alberta government to avoid the ignominy of being compelled to act by some future federal government or the courts.

The strategy goes on to say that "(s)uccessfully implementing approved recovery and management plans is the true measure of how well the Alberta program provides for the needs of species at risk. Success can only be achieved if appropriate changes are made in the way we manage a species and its habitat." This honest, frank definition of recovery recognizes the vital relationship between habitat protection and species recovery. Let us hope, and urge our politicians, to see this as a crucial step towards finally taking meaningful action to assist those species we have done so much to harm. 🐟



The westslope cutthroat trout, recommended to be listed as threatened in 2006, is still waiting for federal politicians to ratify the scientific conclusion. PHOTO: C. OLSON