



## SAGE-GROUSE COURT VICTORY A MAJOR STEP FOR ENDANGERED SPECIES RECOVERY

*By Nigel Douglas, AWA Conservation Specialist*

A landmark court decision offers hope that the endangered greater sage-grouse may have taken the first step on its way to recovery in Canada. The decision may also have major implications for the recovery of other endangered species in the future.

On July 9, a federal court judge in Vancouver ruled that Environment Canada broke the law by refusing to identify critical habitat in a recovery plan for the endangered greater sage-grouse. The lawsuit was filed by Ecojustice in early 2008 on behalf of Alberta Wilderness Association, Federation of Alberta Naturalists, Grasslands Naturalists, Nature Saskatchewan and the Western Canada Wilderness Committee.

The decline of the greater sage-grouse in Canada has been well documented (see, for example, the article in the

April 2009 Advocate). Once widespread across the prairies, the species has been listed as endangered since 1998. The bird now survives in remote corners of south-eastern Alberta and south-western Saskatchewan. In Alberta, from an estimated population of 3,000 to 6,000 birds in the late 1960s, sage-grouse numbers have fallen dramatically. Down to just 84 males on leks (traditional courting sites) in 2008, numbers continue to drop; only 66 males were counted on leks in the spring of 2009, a precipitous 20 percent drop in just the last year.

Sage-grouse habitat has shrunk to around 6,000 km<sup>2</sup> in Canada, just six percent of the species' historic range. According to the federal Committee on the Status of Endangered Wildlife in Canada (COSEWIC), the causes of the decline are well known: "the loss,

fragmentation and degradation of its native grassland habitats through oil and gas exploration, overgrazing and conversion to crops." Without habitat protection, according to Ecojustice, sage-grouse will disappear from Alberta within six years.

Central to the successful court action was the refusal of the federal sage-grouse recovery strategy to identify critical habitat, despite the fact that the 2003 Species at Risk Act requires habitat to be identified "to the extent possible, based on the best available information." Critical habitat for sage-grouse is well known. A peer-reviewed study by leading sage-grouse scientist Dr. Mark Boyce clearly identifies critical habitat for nesting and brood-rearing. Yet Ottawa would not recognize the value of that research and, citing a lack of scientific

information, refused to designate critical habitat.

The environmental groups argued in court that the Minister had ample evidence to identify critical habitat. The judge agreed; he stated it was “unreasonable” for the government to claim it could not identify breeding grounds when knowledge of their locations was “notorious.” He pointed out that the federal government was seeking too high a threshold for identifying critical habitat, suggesting they are seeking “precision or exactitude” whereas the law requires the “best available information.” He also made it clear that designating critical habitat is not discretionary: it is a requirement the Minister must follow.

### **Beyond Sage-grouse**

AWA hopes Ottawa does not appeal this decision and that this successful court challenge will also have positive implications for future recovery of all endangered species in Canada. Justice Zinn underlined that critical habitat must be identified in all endangered species recovery strategies. “There is reason to believe endangered species across Canada will finally receive protection with federal courts forcing the government to obey its own laws,” says AWA Past President Cliff Wallis.



*Standing tall with tail fanned and white neck feathers raised in a ruff, a male greater sage-grouse will display on his breeding ground. He will inflate and compress air sacs in his throat to create loud popping sounds. Males are known to display for several weeks while the female will visit only for a short time to mate. Dancing grounds or lek sites are a critical part of the habitat greater sage-grouse depend on. PHOTO: C. OLSON*

Ecojustice executive director Devon Page agrees. “We won’t go away,” he says. “If they continue to ignore the law, we will continue to hammer them in the courts and this case will be a powerful tool for the protection all of Canada’s species at risk, including caribou, killer whales and polar bears.”

### **Next steps**

Sage-grouse are certainly not safe yet: identifying critical habitat is only the first step. Designating critical habitat, of course, will not make the birds better off. It is only when the habitat starts to be protected from inappropriate agricultural and industrial activity that the grouse will have a chance of recovering. Time is not on their side. “Protecting habitat is the most important thing we can do to help the recovery of species at risk,” says Dr. Boyce, “and for the sage-grouse this needs to be done now.”

AWA believes that all new industrial activity in critical sage-grouse habitat must be halted immediately. In the longer term, there is an urgent need to set aside large blocks of grassland as protected areas, including the area south of Cypress Hills in south-eastern Alberta. The federal Species at Risk Act acknowledges that 86 percent of Canada’s 449 species at risk are in this situation because of loss or degradation of habitat. Rather than being dragged kicking and screaming through every step of the recovery process, the federal and provincial governments should be working together to identify and protect sage-grouse habitat as an urgent priority. This magnificent prairie wildlife icon deserves no less. 🐾



*Air. 39cmH x 38cmW x 48cmL Kisii stone. PHOTO: © LORETTA KYLE*