

# Sage-grouse on the Brink:

## How governments have failed Alberta's most endangered species

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*An American sage-grouse - photos taken in the U.S. may be even more appropriate in the future since Alberta arguably relies more on importing sage-grouse than on restoring habitat.*

PHOTO: PUBLIC DOMAIN, CREDIT DAVE MENKE, U.S. FISH AND WILDLIFE SERVICE

Who should take the blame if Alberta's greater sage-grouse, the province's most endangered species, indeed disappears from Alberta in the next few years, as scientists predict it could? Just thirteen male sage-grouse were counted in 2011, a 98 percent decline from the numbers recorded in 1968. In neighbouring Saskatchewan, the only other province to support the species, the situation is little better: just 35 males were counted this year. Desperate last-ditch measures will be required from both provincial and federal governments to halt the slide.

If sage-grouse do die out in Canada, will the blame lie with the provincial governments which manage the majority of sage-grouse habitat? They, after all, have continued to authorize new industrial access as the bird's numbers have plummeted towards extirpation (provincial extinction). Is the culprit the

federal government? Ottawa has had a *Species at Risk Act* (SARA) since 2002 yet has failed to enact any measures to effectively protect sage-grouse habitat. Or is it the oil and gas industry? Their ambitions are responsible for increased access into sage-grouse habitat; we have known for many years that this access is the driving force behind the dramatic

**It is this failure to protect sufficient habitat which has been the abiding failure of all levels of government when it comes to the recovery of sage-grouse.**

decline.

The answer is likely some combination of the three. They must share the blame. The job of oil and gas companies – indeed the reason for their existence – is to exploit petroleum resources and to make money for their shareholders. But it is the role of governments to regulate that activity and say where industrial operations and

infrastructure are appropriate and where they are not. Government must decide where business-as-usual is acceptable and where the environment is so sensitive that special measures need to be implemented. If the sage-grouse's inexorable slide towards extirpation continues the failure of the regulators to regulate will be most prominent on the bird's final epitaph.

In light of the desperate plight of the province's sage-grouse, AWA hosted the *Emergency Sage-Grouse Summit* in September 2011 (see Madeline Wilson's article on page

24 of this issue). The two-day summit of international sage-grouse experts, environmentalists, and landowners produced a series of recommendations for emergency measures to halt the decline. Whether federal or provincial governments will continue their foot-dragging or whether they have the courage to take up the challenge remains to be seen.

## Provincial Procrastination

The majority of sage-grouse habitat in Alberta – more than 80 percent – is on provincial public land. So decisions made over previous decades to allow continued industrial activity in sage-grouse habitat were Alberta's. Similarly, future provincial government decisions will determine whether or not the species has a future in the province.

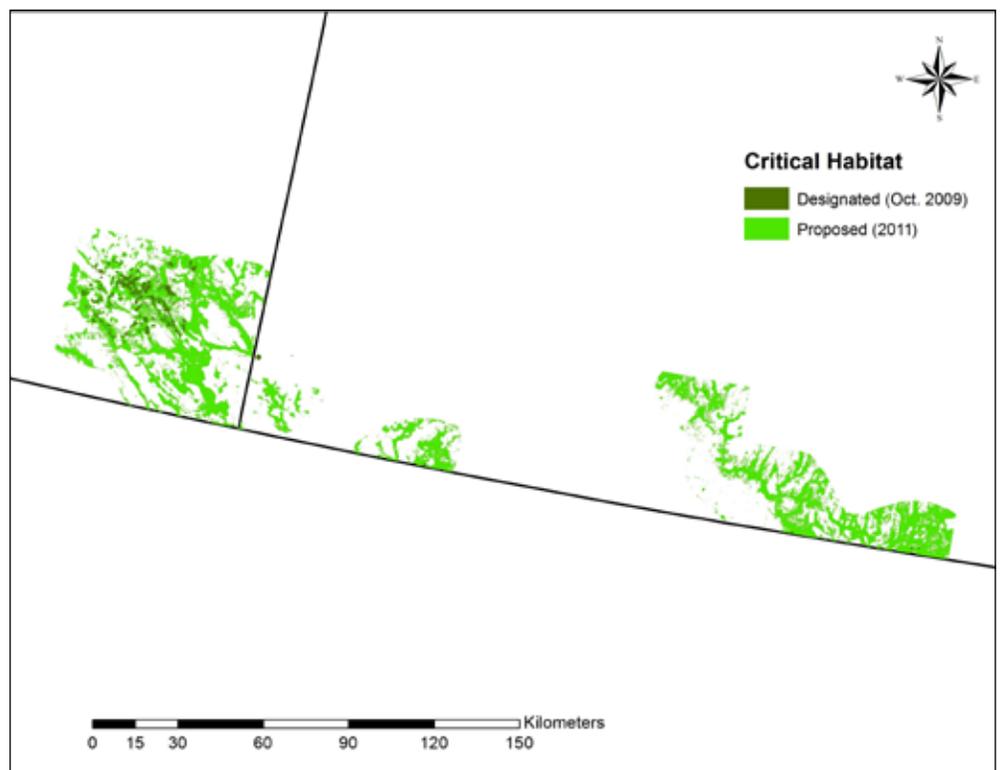
Alberta is one of only two provinces that does not have its own endangered species legislation. Instead, endangered species are managed through the 1984 *Wildlife Act*, an act initially designed to govern hunting and other allocation of the wildlife "resource." Subsequent additions to the *Wildlife Act* have allowed for some degree of endangered species management but the act is ill-suited for this vital role. The sage-grouse was first recognized as a species that "may be at risk" in 1996 and was listed as Endangered under the provincial *Wildlife Act* in 2000. Since 1996 the population has crashed by more than 90 percent. It's an understatement to say this catastrophic fall is hardly a ringing endorsement for endangered species management in the province.

Under the *Wildlife Act* a minister can make regulations protecting and restoring wildlife habitat, including that of endangered species, but these provisions have never been used. There is no habitat in Alberta that is legally protected for the benefit of endangered species. All measures are optional and designation as a threatened or endangered species only requires setting up a recovery team.

But saving the sage-grouse doesn't need a new law. Even without endangered species legislation, Alberta could protect remaining sage-grouse habitat tomorrow and begin to recover the species. All that is missing, and it is obviously the biggest piece of the jigsaw puzzle, is the political will to restrict industrial access to critical habitat.

## Federal Failures

So what happens when provinces fail to manage and recover their endangered species as is so often the case in Alberta? The federal *Species at Risk Act* (SARA) includes tools federal politicians can use to compel the provinces to act to recover species at risk. But once again there has been a consistent reluctance to actually use these tools to protect those species that cannot protect themselves.



*Critical habitat designated for greater sage-grouse in Canada in 2009\*<sup>a</sup> (dark green areas) based only on known lek locations and source nest and brood habitats designated in the Manyberries area of Alberta (Aldridge and Boyce 2007). Pale green areas represent proposed updates to critical habitat\*<sup>b</sup> based on spatial nest and brood models extrapolated across the species range. Map is from the following presentation: Sage-grouse conservation in a changing world: What does the future hold?, by Dr. C. Aldridge, September 8, 2011.*

*\*<sup>a</sup> 2009 Critical Habitat Source: Government of Canada; Adapted from: Aldridge, C. L. 2005. Identifying habitats for persistence of Greater Sage-grouse (*Centrocercus urophasianus*) in Alberta, Canada. Dissertation, University of Alberta, Edmonton, Alberta.*

*\*<sup>b</sup> Proposal Critical Habitat Source: Government of Canada (Pruss, S. Gummer, D., Knaga, P., Suitor, M. and P. Fargey. 2011. Draft amendment to the recovery strategy for the Greater Sage-grouse (*Centrocercus urophasianus urophasianus*) in Canada).*

The purpose of SARA is 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." (Species at Risk Act Public Registry [http://www.sararegistry.gc.ca/approach/act/purpose\\_e.cfm](http://www.sararegistry.gc.ca/approach/act/purpose_e.cfm)). Since the Act came into force in 2003, the population of the *endangered* sage-grouse has dropped by 86 percent. It is evident that, for this species at least, the Act so far has failed abysmally in fulfilling its purpose.

One of the failures of SARA is that the federal government only has direct jurisdiction over federally-managed land, for example National Parks and National Wildlife Areas. When provinces fail to act – and Alberta has clearly failed to

act to protect sage-grouse – then SARA includes "safety-net" provisions allowing the minister to bring in emergency measures to compel the provinces to protect habitat. But these provisions are legally unproven and so far unused. It is difficult to imagine a federal government picking a political fight with the Alberta government over something as unimportant to the powers that be as endangered wildlife.

For several years, AWA and other environmental organizations have fought court battles to try to compel federal environment ministers to do what their legislation tells them they should do. But this has been a slow and painful process: sage-grouse numbers have continued to fall as judges have ruled and ministers have stalled.

In early 2008 Ecojustice filed a lawsuit on behalf of AWA, Federation



*This silver sage-brush habitat in southeast Alberta is critical for sage-grouse.*

PHOTO: © N. DOUGLAS

## Will Canadian Courts Follow Their U.S. Cousins?

Since Ottawa refuses to act assertively on behalf of endangered species AWA has gone to court with other conservation organizations to try to secure some positive action before it's too late. In 2009 this path forced the federal government to start to address its failure to identify critical greater sage-grouse habitat. Now, as this grouse teeters on the brink of extirpation in Alberta, AWA is preparing to return to Federal Court to seek an emergency protection order for this species.

Although the United States has a different legislative foundation for protecting species at risk than Canada we are encouraged in our judicial campaign by a September decision from the American

courts. Western Watersheds Project challenged U.S. federal land management plans for two species-threatening flaws. They failed to consider the cumulative impacts of oil and gas on sage-grouse in southwest Wyoming and failed to include sufficient information or alternatives to grazing in Idaho. Western Watersheds won the first round of this case. Judge Winmill ruled that federal insufficiencies will accelerate the sage-grouse's downward spiral and must be rectified.

The Idaho District Court's sense of urgency is one we hope the Federal Court of Canada will emulate when Ecojustice appears there later this fall on behalf of greater sage-grouse.

- Ian Urquhart

of Alberta Naturalists, Grasslands Naturalists, Nature Saskatchewan and the Western Canada Wilderness Committee in response to the lack of government action to protect declining greater sage-grouse populations. The lawsuit took issue with the failure of the Minister of the Environment to designate critical habitat in the federal sage-grouse *Recovery Strategy* despite the fact the required ecological data were readily available. At this point, the recovery strategy was already one and a half

years late and included only a schedule of planned habitat studies. No critical habitat was designated. In July 2009, the Federal Court ruled that Environment Canada had broken the law by failing to identify critical habitat in the greater sage-grouse recovery plan. Justice Zinn, in this precedent setting decision, stated it was "unreasonable" for the government to claim it could not identify breeding grounds when knowledge of their location was "notorious." The judge made it clear that the phrase "to

the extent possible," found in SARA, demanded that a precautionary approach should be taken when designating critical habitat.

Despite this rap on the knuckles from the federal courts, Ottawa has continued to drag its feet when it comes to sage-grouse recovery. A minimal amount of sage-grouse "critical habitat" has now been identified but this area is insufficient to halt the bird's decline, let alone allow for the species' recovery (see map on page 11). 🐾



*Intact mixed grass prairie environments, essential to the survival of sage-grouse, also are vital to species such as these pronghorn antelope.*

PHOTO: © J. BARGMAN