

# CONSTRAINED CONSERVATION: EXAMINING LEGAL, POLICY, AND ORGANIZATIONAL OBSTACLES TO SAGE-GROUSE CONSERVATION AND RECOVERY IN ALBERTA



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We all wonder why government officials don't follow the recommendations scientific experts provide them with. Is misunderstanding the root cause? Undoubtedly, even if all involved parties are presented with the same information different conclusions may be reached and contrary decisions may be made. In her paper *Constrained Conservation: Examining Legal, Policy, and Organizational Obstacles to Sage-grouse Conservation and Recovery in Alberta*, Candice Cook set out to closely examine the factors that influence species recovery. She examined the space where information is filtered, decisions are made, and where, more often than not, the health of wildlife and ecosystems is sacrificed to serve some other good; this is what I refer to as the "space in-between."

Past experience repeatedly reveals that identifying the ecological factors contributing to species decline and developing the necessary management regime is only one step towards species conservation and recovery. Cook's work emphasizes that conservation and recovery strategies must be supported by the institutional and land management context in which they are implemented; effective solutions depend on much more than good science (all subsequent quotations are taken from Cook's thesis): "Although biologists and species experts are often tasked with prescribing solutions and strategies for conservation and recovery, it is bureaucrats and politicians who make the ultimate management decisions." (p.3).

This broader context, referred to by some scholars as the "task environment," includes the ethical, organizational and policy forces and factors that affect the work of endangered species. Cook explores this "task environment" in the context of greater sage-grouse (*Centrocercus urophasianus*) and helps us understand why we have not seen any

meaningful action to protect and recover this endangered prairie icon. More specifically, she reviews and analyzes public documents such as legislation, government policy, business plans, and existing research; she describes the regulatory and management context of Alberta's land and resource system; and she interviews members of the government ministries directly responsible for land and resource management decisions affecting greater sage-grouse protection and recovery.

## Sage-grouse on the Brink

The current state of the greater sage-grouse in Alberta presents an exemplary case study to examine this "task environment." Over the last two decades, the sage-grouse population has been decimated. Last spring, only 13 male sage-grouse were recorded on leks in Alberta. In neighbouring Saskatchewan, the only other Canadian province in which sage-grouse can still be found, populations were only slightly higher. These dismal counts represent an almost 90 percent population collapse in Canada between 1988 and 2006. In Canada, populations persist only in the extreme southeastern corner of Alberta and southwestern corner of Saskatchewan.

The survival of the sage-grouse is intimately connected to the health and presence of silver sagebrush (*Artemisia cana*) flats, found in the Grasslands Natural Region. Sage-grouse is a species that, due to a strong reliance on a diminishing and degraded habitat type, a high fidelity to existing habitat, and a small population on the brink of disappearance, desperately needs human intervention to prevent its extinction from Canada (extirpation). Alberta designated the sage-grouse to be *At Risk* in 1996 and downgraded its status to *Endangered* in 2000. This followed the lead of the federal Committee on the Status of Endangered Wildlife in Canada

(COSEWIC) that had identified the greater sage-grouse as an *Endangered* species in 1998.

Yet it is now 2012 and neither provincial nor federal governments have taken any meaningful steps to protect sage-grouse or the habitat upon which its survival depends. For those unfamiliar with this saga, it is one that continues to have all those involved scratching (or banging) their heads, wondering what angle, tactic or combination of words will finally prompt the necessary actions. The environmental law group Ecojustice is currently representing AWA and several other conservation groups as we pursue legal action against federal Environment Minister Peter Kent over his continued failure to protect Canada's endangered greater sage-grouse. This current legal battle marks the species' second Federal Court appearance in the last three years.

## Interview Results

In order to explore fully the regulatory environment in which decisions regarding sage-grouse conservation are made, Cook interviewed representatives from relevant government ministries, departments, and departmental divisions. The apparent themes and direct excerpts from these interviews provide seldom-heard insights into the organizational structure, culture and politics of species conservation. They offer a rare glimpse into the obstacles faced by those working on-the-ground. In total 26 key informants were interviewed, including representatives from Parks Canada, Agriculture and Agri-Food Canada, Environment Canada, Alberta Sustainable Resource Development, Alberta Environment, the Energy Resources Conservation Board and the Department of Energy. Two interviews with members of Saskatchewan Environment were also conducted.

Overall, 25 out of 26 key informants agreed that existing legal and policy

tools required improvement to enable mandate fulfillment and conservation support. Twenty-one out of 26 key informants stated they believed there were major barriers to achieving sage-grouse conservation and recovery goals. Some of the constraints identified included legal deficiencies, management ambiguity and conflicting objectives, organizational departmentalization and fractured jurisdiction. In addition, deficiencies in laws and policies have led to uncertainty in prioritizing conservation, overarching emphasis upon economic agendas, and constrained application of the limited tools that do exist (Cook, 2010).

### Provincial and Federal Legislation

these laws should be applied. According to Cook, “federal interview subjects reflected a strong desire to avoid using these provisions stating that ‘safety net’ provisions were never intended to be implemented and were instead put in place to encourage complimentary provincial legislation” (sic) (p. 95).

Alberta is one of five remaining provinces that have failed to produce provincial endangered species legislation. Currently provincial species at risk are sloppily dealt with under the Alberta *Wildlife Act*. Originally developed in 1984 to govern consumptive wildlife activities, the *Wildlife Act* has been amended to include minimal provisions that give

thought to be the main causes of species decline in Canada (2010). In light of weak provincial legislation, conservation groups are relying upon SARA and those never-intended-to-be-implemented safety-net provisions to prevent the disappearance of sage-grouse from Alberta’s grasslands.

### Prioritization of Provincial Economic Agenda

Within provincial government ministries there was found to be an overarching emphasis given to ensuring land and resources are managed to provide economic benefits. Although within the provincial business plan there are specific goals that deal directly with Alberta’s fish



*Lorne Fitch discussing the habitat needs of species such as the greater sage-grouse during AWA's 2010 guided hike into southeastern Alberta's Sage Creek area.*

PHOTO: © J. BARGMAN

Since its inception in 2002, the main piece of legislation that is supposed to protect species at risk in Canada is the *Species at Risk Act* (SARA). However under SARA direct federal protection is only provided to species that occur on federal lands. Although provisions exist that require federal action on provincial lands if a province is failing to protect species at risk, these “safety-net” provisions have never been implemented. Based on statements made by federal government representatives throughout the interview process, there is a great deal of uncertainty surrounding if and when

some protection to endangered species. However, besides producing a species recovery plan, the act requires no legal protection for species or their habitat. All other management and recovery actions occur at the discretion of the Minister of Sustainable Resource Development. Since the Alberta *Greater Sage-Grouse Recovery Plan* was produced in 2005, populations have only continued to plummet. As Cook emphasizes, Alberta wildlife legislation divides species and habitat protection, despite the fact that habitat loss and fragmentation due to human activity and development are

and wildlife resources, overall there is a clear primacy given to the use of Alberta’s natural resources where economic “needs” are valued above those of conservation. Throughout the interview process many informants mentioned the high priority attached to facilitating economic development within the province and that, in some cases, this served as a barrier to conservation. Certain interview subjects also indicated a “client” focus where part of their responsibility was to facilitate industrial activities, as well as an overall culture of accommodation to the oil and gas industry. As a result, land management

recommendations for species protection were often viewed as limiting industrial development. This outlook is reflected in the following quotations:

*“Currently appears that the economy takes precedence over conservation; development trumps recovery...Cattle, oil and water all seem to have a higher value than species at risk.”* **ASRD - Fish and Wildlife Representative** (p. 77)

*“Alberta is open for business and that statement, which is commonly made and commonly made at the highest political level implies that you will be able to do anything anywhere and you might have certain conditions on that but you will be able to do it. And that basic understanding has sometimes severe implications for species at risk that may be heavily dependent upon the continued existence of an undisturbed landscape.”* **ASRD - Fish and Wildlife Representative** (p. 77)

*“We definitely push for science based decision and one of the main reasons for that is to provide industry, our clients, with a high level of certainty as to allow them to do the best forecasting and future planning that they can do.”* **Department of Energy Representative** (p. 78)

*“There tends to be a bit of a culture of accommodation to the oil and gas industry. So depending on which sectors we are dealing with, the agrologists side of things downstairs, their top priority is to grazing lease holders and grazing and their close second is the oil and gas industry. The fact that the oil and gas industry on public lands actually pays money to the lease holders, they take it upon themselves sometimes to be advocates for the development because of that.”* **ASRD - Fish and Wildlife Representative** (p. 78)

### **Mandate Conflicts and Fractured Jurisdiction**

Within Alberta’s existing land-use management framework, land and resource authority are divided between several departments and agencies, each holding various amounts of power and authority. “Each government entity operates under varying legislation and policy delegating authority over specific environmental components (e.g. water, air, wildlife), land use activities (e.g. industrial development, wildlife management, recreation) and

jurisdictional divisions (e.g. parks and protected areas)” (p.27). It was concluded that substantive mandate conflicts existed within provincial government departments and that these conflicts had a negative effect on land-use planning and sage-grouse conservation. The most consistent mandate conflict that emerged was related to development versus conservation, especially within the ministry of Sustainable Resource Development (ASRD) where informants identified more strongly with their divisional mandate responsibilities than with the departmental mandate.

At the time Cook’s study took place, ASRD had four main departmental divisions: Forestry, Fish and Wildlife, Public Lands and Corporate Services (it should be noted that some of the departmental divisions and responsibilities within ASRD have changed since the time of this study). Both ASRD-Fish and Wildlife and ASRD-Public Lands hold responsibilities that affect sage-grouse conservation and recovery. The Fish and Wildlife division is responsible for the management of Alberta’s wildlife resources but acts as an advisor to the land managers under ASRD-Public Lands, which has the most overarching authority over the public lands in the southeastern portion of the province. The responsibilities of the land managers are further divided into those responsible for industrial activities and those responsible for the management of grazing activities. Approval, renewal and management of grazing dispositions is the responsibility of the rangeland management division, while the lands disposition division is in charge of the approval and provision of industrial dispositions. ASRD-Fish and Wildlife informants referred to the fact that the divisional segregation within ASRD placed them in an oppositional role to others in the department as they were often viewed as hindering development.

*“You are almost perceived as an enemy of the people if you advocate that an area should not be able to have development on it. So that is the culture. That is the cultural reality.”* **ASRD - Fish and Wildlife Representative** (p.83)

*“Their [Fish and Wildlife’s] mandate is to protect that species, my mandate is to protect that species, but also to facilitate industrial development, which is to some*

*degree contradictory. That is why it is such a tough job to do because you are walking such a fine line between making these guys happy [industry] but also protecting the environment. So yeah, entrenched in public lands itself, we have policy directions that are not necessarily parallel.”* **ASRD - Public Lands Representative** (p.84)

*“The biggest one is do we have a mandate to conserve and protect or do we have a mandate to develop and give access. Are we open for business or do we want to protect and to what extent can we allow protection before we impact the other or development before we impact protection. This is what I live with everyday, my staff and the Fish and Wildlife staff and the business plan is in conflict, direct conflict, with that. That is the SRD business plan.”* **ASRD - Rangeland Representative** (p.84)

### **Concluding Comments**

Upon first reading this paper, I was immediately struck by the importance of the insights gained by Cook into the institutional constraints through which seemingly simple management tasks are filtered to the point where legal action, surely a last-ditch effort, is required to draw attention to the plight of one of Canada’s most endangered species. As we move forward in our campaigns to defend the wildlife, wild lands and wild waters across Alberta, we will continue to confront this “task environment,” the ethical, organizational and policy forces and factors that affect our work on behalf of endangered species.

We have known for over a decade that greater sage-grouse populations are plummeting. There exists a wealth of information regarding their biological requirements and maps delineating the habitat critical to sage-grouse survival and recovery. We even know the threats these magnificent birds face on the landscape. Yet this multitude of information is clearly not enough. As a result, sage-grouse will now get their second day in court. I leave you with the words of Candice Cook: “In finishing, it is my hope that mine and some of my colleague’s research will be successful in finding ways for human beings to exist alongside these fantastical creatures or at least bring attention to the issue so that if in the end we fail, we recognize our loss.”[emphasis added]▲