Alberta's *Wildlife Act:*

Insights from a U of C Environmental Law Class

By Brittany Verbeek, *AWA Conservation Specialist*

I was able to get a small taste of being an environmental law student in March when I was invited to sit in on Professor Shaun Fluker's University of Calgary 'Law of Species and Places' class. The topic of the day: Alberta's *Wildlife Act*. I was both fascinated and disturbed to learn just how inadequate the Act is when it comes to recognizing and protecting effectively endangered species in Alberta.

To provide a bit of background, legislative frameworks for endangered species across the country largely were sparked by Canada's ratification of the United Nations Convention on Biological Diversity in 1992. To uphold this international treaty, Canada developed a national biodiversity strategy in 1995 and seven years later Parliament passed the *Species at Risk Act* (SARA). During that same time period Alberta signed the *National Accord for the Protection of Species at Risk*, an agreement to work collaboratively with other provinces, territories, and the federal government to develop laws and policies for protecting species at risk and their habitats.

Shaun believes that anyone who seeks meaningful legislative protection for threatened species in Alberta must advocate not only for federal legislation but also for strong provincial laws. Despite SARA being an important tool, it's generally limited to federal lands and to species falling under federal legislative powers, such as fish and migratory birds. Of course the majority of land in Alberta is property of the provincial Crown and most of the habitat of endangered species in need of protection is located outside national parks and other federal lands. As we've seen in the case of the greater sage-grouse SARA may be invoked on non-federal lands with respect to "non-federal" species. Section 34.(2) allows the federal cabinet to extend its authority to provincial lands and species. However, in part due to the fact the environment is an area of shared federal-provincial jurisdiction, SARA assumes that provinces will introduce their own species at risk legislation. All of this highlights the need for provinces to have their own endangered species laws in place.

Unlike many other Canadian jurisdictions, Alberta does not have stand-alone endangered species legislation; the *Wildlife Act* remains dominant with respect to species at risk management. The January 2009 document *Alberta's Strategy for the Management of Species at Risk (2009-2014)* committed the province to: "Examine 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." Yet, there doesn't appear to be any public evidence this examination ever took place.

The *Wildlife Act* was born long before concern arose about and commitments were made to biodiversity at the national and international levels. The Act was the child of a resource conservation/hunting ethic; today's belief that species protection should be a core element of wildlife management didn't receive serious consideration. AWA has advocated for years that our wildlife policy, act, and regulations represent neither contemporary science nor the public's regard for wildlife. They need significant makeovers. The Alberta government amended the Wildlife Act in 1996 to comply with its commitment to the National Accord and added rules for designating and protecting endangered species. However, based on what I heard from Shaun and his students, I wouldn't suggest Albertans should hold their breath waiting for the Act and its supporting regulations to change to ensure the protection and recovery of our many endangered species.

I took the following away from the class discussion.

The *Wildlife Act* is focused heavily on hunting. It classifies wildlife as game and non-game species, and its regulations address subjects such as hunting, trapping, and possessing wildlife. The Act does not adequately address many of today's wildlife concerns such as habitat requirements and endangered species. In fact very little of it is dedicated to endangered species management; only section 6 regarding the Endangered Species Conservation Committee (ESCC) and section 36 prohibiting the disturbance or destruction of a species' residence (although with exceptions) touch on this subject.

The greatest flaw with the *Wildlife Act* seems to be that virtually all aspects relating to species at risk management are at the discretion of the Minister. As Shaun put it: "The Alberta government has elected to govern endangered species almost entirely by policy and the use of discretionary power behind closed doors."

This begins at the fundamental level of a definition. *Alberta's Strategy for the Management of Species at Risk (2009-2014)* defines threatened and endangered species as distinct categories: (1) an endangered species is one facing imminent extirpation or ex-

tinction; (2) a threatened species is one likely to become endangered if limiting factors are not reversed. But under the *Wildlife Act* there is no such distinction. An endangered or threatened species is essentially defined under the Act as a species that the Minister designates as such.

The Minister is required by the Act to establish and maintain the ESCC (mentioned above), a committee whose role is to recommend which species should be listed as endangered and then advise on the preparation and implementation of their recovery plans. The *Wildlife Act* also requires the ESCC to appoint a subcommittee of scientists to assess the status of species and report back on whether the species should be listed. This may sound positive but there is no legal requirement to ensure the members of the ESCC or the subcommittee have any of the necessary expertise or qualifications. There is no legal process to direct how, when, and on what basis ESCC decides to assess a species. To top it off, ESCC recommendations can remain under the Minister's consideration indefinitely; the law doesn't set a timeline/deadline for a decision.

Section 6 of the Act mentions recovery plans. But whether or not a recovery plan is developed, how long it takes to develop such a recovery plan, and its contents are once again wholly at the discretion of the Minister. The image I immediately conjured in my mind when I learnt this was laughable. A long line up of species– a whooping crane, a swift fox, a limber pine tree, a short horned lizard along with many others – waiting and practicing their speeches to convince the current minister of their worth.

This discretionary framework produces other shortcomings of the Act – the complete lack of predictability, transparency, and accountability in the entire process. Legally, the Minister does not need to justify or release to the public any decisions pertaining to species at risk in Alberta. And, as many Albertans have witnessed, the absence of statutory deadlines and obligations deepens the dire straits many of the province's species find themselves in.

Nonsensically, even in conservation areas and wildlife sanctuaries the Minister may authorize certain activities. The end result? There is no meaningful protection for species habitat under the *Wildlife Act*.

This is not to say there aren't other ways provincial agencies can protect wildlife species. Requirements may be added through permitting processes; terms and conditions may be attached to development approvals. The 2013 Integrated Standards and Guidelines document of the Alberta Energy Regulator (AER) speaks to wildlife surveying and monitoring, species at risk protection, and set back requirements. There are many other provincial policy documents, including the *Land-use Framework* and its underlying regional plans, which describe the importance of biodiversity and species at risk recovery. Policies can be excellent guiding tools for governments but they can also simply be smoke and mirrors when there isn't effective legislation to support and enforce them. This is the case in Alberta regarding species at risk.

Reflecting on what I learnt in that classroom, I understand much better why Alberta badly needs stand-alone species at risk legislation to address effectively some of the problems plaguing the current provincial legislative framework. It also reinforced how important it is for Alberta's wildlife legislation to reflect the following value statements:

- AWA believes that wildlife in Alberta should be valued not just for their "usefulness" as a resource, but also for their own intrinsic value. The majority of Albertans do not consume wildlife, but value them in their own right. This applies not only to endangered or threatened wildlife, but to all wildlife.
- Wildlife should not be managed for the benefit of hunters, trappers or game farmers; wildlife shouldn't be managed for the benefit of farmers, or city-dwellers or oil executives. Wildlife should be managed for all Albertans and for the benefit of the species themselves. For this to happen, the provincial *Wildlife Act* and its policy and regulations require a thorough and public revision.

These statements have long been part of the AWA mantra. Don't expect to see them disappear any time soon.