

Protecting & Recovering Wildlife in Canada



By Joanna Skrajny, *AWA Conservation Specialist*

Efforts to try to prevent the further decline of wildlife too often seem as ineffective as trying to plug a geyser of water from a burst fire hydrant with your hands: largely futile and likely painful. The history of industrial development resembles that geyser. Resource extraction is too seldom slowed to benefit species at risk. Governments seem deaf to the argument that a healthy environment generates real economic benefits – by providing clean water and air or by improving mental health and tourism opportunities. Instead they more often are seduced by corporate promises of the resource sector jobs industrialization may deliver.

The first step on any road to recovery is admitting that a serious problem exists. The World Wildlife Fund of Canada's Living Planet Index reveals such a problem for wildlife. It shows that half of the species monitored since 1970 have declined in abundance. Those declines are stunning; the average decline in abundance is 83 percent. Even the species "protected" under the federal *Species at Risk Act* (SARA) continue their downward spiral; they have declined by almost 30 percent.

Amazingly perhaps, this reality of steep population declines sometimes co-exists with a denial that wildlife species are in trouble at all. Take for example Alberta's bull trout, which in 2012 were recommended for a federal threatened listing due to the fact that "no populations are abundant and more than half show evidence of decline." Without immediate actions to protect bull trout that recommendation projected an additional decline of

over 30 percent over the next three generations of this species. Unfortunately, since bull trout are very easy to catch, a common misconception may develop where angling success is mistakenly thought to be due to the fact the species is in great shape. On the one hand, this misconception makes sense. If you are out on the water and catch a couple of large fish in a day, your instinct might be to think there must be a lot of fish in that river. In the case of bull trout, it's highly possible you would have caught one of a small handful of large adult trout remaining in that river. Clearly, these sorts of misconceptions must be addressed for the public to understand the imperiled status of wildlife and to lend their support for the recovery of these species.

In Canada, a second step would be for the federal government to follow the spirit of its own law and actually list as "at risk" those species identified as such by its own advisory body, the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). The federal *Species at Risk Act* is clear here: "within nine months after receiving an assessment of the status of a species by COSEWIC, [the Governor in Council] may review that assessment and may, on the recommendation of the Minister, (a) accept the assessment and add the species to the List; (b) decide not to add the species to the List; or (c) refer the matter back to COSEWIC for further information or consideration."

If the Governor in Council (the formal term for the federal cabinet) doesn't make a decision in nine months, the Minister is

required by the Act to list the species according to COSEWIC's recommendation. This process, in my view, is a reasonable one that establishes a sense of urgency to act on behalf of an imperiled species.

Over time, the interpretation of what these timelines demand has warped substantially. The clock did not begin ticking until the Environment Minister handed COSEWIC's assessment over to the cabinet. In 2015, Jamie McDevitt-Irwin and colleagues found that it took an average of 3 and a half years for the federal government to decide whether it would list marine fishes under the *Species at Risk Act*. If the species was assessed as threatened or endangered, the decision took even longer, an average of 5 years. It's a similar story in Alberta. Despite the fact that bull trout have been recommended for federal listing since 2012, they still have not been listed. The neglect of the lake sturgeon's endangered status is even more striking. COSEWIC first designated the lake sturgeon population in the Saskatchewan river as endangered in 2005; the designation was reaffirmed by a second COSEWIC status assessment in 2017; in January 2018 the Minister of Environment and Climate Change said she would forward the COSEWIC assessment to cabinet "as soon as possible." Lake sturgeon are still waiting for that to happen and the nine-month clock to start ticking.

The federal government, having heard from the public, ENGOs and their own MPs on this issue, recently released a policy to create a standard timeline for listing species at risk. Since this timeline still

tolerates delays it's hard to see it as one driven by a need to take urgent action. The new policy specifies that the Minister must hand a COSEWIC assessment to the Governor in Council within 15 months "for terrestrial species and aquatic species with straightforward consultation requirements" and 27 months for "aquatic species with extended consultation requirements". This means that, within two or three years, the Minister will try to secure a Governor in Council decision on whether a species should be added to the "at risk" Schedule of SARA. For fisheries, the Department of Fisheries and Oceans (DFO) claims they must conduct an assessment of a species' potential to recover (is it even worth listing the species if we can't recover it), con-

sultations and socio-economic analyses (what impact will listing a species have on the economy). Once advice is "approved nationally by DFO Senior Executive Committee + Implicated Sectors" DFO will submit their own recommendation package to the Minister, who then submits it to the Governor in Council.

While this policy shortens any political foot-dragging, it does not appear at all to address the bureaucratic quagmire that effectively seems to link a decision to list with convenience. The proof in this suspicion is in the pudding: Findlay et al reported in 2009 that when a listing decision is made, species perceived to be economically valuable, are managed by DFO, or occur entirely in Canada

are the least likely to receive listing. In fact, nearly three-quarters (70.6 percent) of the marine fish species identified by COSEWIC as endangered or threatened are denied listing. This pattern allows commercial fishing (usually one cause of decline) to continue.

In the summer of 2016, the federal cabinet rejected COSEWIC's 2011 recommendation to list Atlantic bluefin tuna as endangered as they believed it would "result in significant and immediate socio-economic impacts" on the multi-million dollar commercial and sport fishery. This privileging of industry over the existence of species couldn't be more contrary to the purpose of the *Species at Risk Act*. Federal politicians should imagine what

the impacts will be when the species no longer exists.

If a species is listed as endangered or threatened, it's illegal to kill, harass, capture, buy, or sell a member of that species or damage/destroy its nest or den. However, these prohibitions only apply to federal lands. This is why when the *Species at Risk Act* was introduced and first debated, Senator Mira Spivak commented that “in this bill, we are left with two distinct classes of species at risk. We have those that, by chance, make their way to federal lands — about 5 per cent of our country outside the territories. By law, they and their dens and nests are protected if they are near a post office, an airport, a military base, a Coast Guard station or a national park. Then we have all the others whose life and residence may or may not be protected by cabinet order, unless they are aquatic species or protected under the *Migratory Birds Convention Act*. That is what is in this bill.”

The listing of a species triggers a series of reports and actions which are intended to help recover the species. The federal government is failing on this front as well. In 2013, the Auditor General of Canada stated the government was not meeting its legal obligation to complete recovery strategies, action plans, or management plans. At that time, 146 recovery strategies had not been completed and only seven of 97 action plans were in place.

Given AWA's work on species-at-risk this didn't surprise; most federal actions taken to recover species at risk have been due to Environmental Non-Government Organizations (ENGOs) taking legal action to force the federal government to uphold its own laws. AWA's defence of greater sage-grouse is a prime illustration of this.

So too is the example of killer whales in B.C. waters. Listed as endangered in 2003, southern resident killer whales were among the first species to go through the recovery planning process under the *Species at Risk Act*. In 2008, DFO published a Recovery Strategy for this species and issued a “protection statement” which they tried to use to protect critical

habitat using voluntary guidelines and non-binding laws – a completely unlawful approach. In 2009, this was replaced by a Critical Habitat Order, the first ever under the *Species at Risk Act* (SARA). However, it still completely failed to protect habitat that was critical for the species' survival and recovery.

In 2012, nine conservation groups represented by Ecojustice won a landmark decision in Federal Court, which ruled that the government had failed to adequately protect the critical habitat of southern resident killer whales.

Since this case, the government continues to fail to adequately identify critical habitat for the survival and recovery of species at risk. According to a review by Sarah Bird and Karen Hodges at the University of British Columbia, nearly two-thirds of species with published Recovery Strategies (62.9 percent) do not have any critical habitat designated at all. One quarter of these species have some partial aspects of habitat designated and only 12 percent of the strategies contain a complete identification of habitat. Remember too that identifying this habitat is only the first step – the critical habitat also must have an order protecting it. Under the Act, the Minister must publish a Critical Habitat Order within 180 days of a Recovery Strategy being published.

After public pressure and legal action to publish a critical habitat order for killer whales, the federal government refused to issue any more, despite the fact that over 100 species were now in need of habitat protection. That didn't change until Alberta Wilderness Association and Timberwolf Wilderness Society took legal action in 2015 to force the government to issue a Critical Habitat Order for threatened westslope cutthroat trout. Since that initiative, 18 more critical habitat orders have been issued.

But issuing a habitat order still does not guarantee government actually will take action to protect and recover species.

For killer whales, the situation is now so dire that only 76 individuals remain

and no successful births have been documented since 2015. On behalf of five ENGOs (David Suzuki Foundation, Georgia Strait Alliance, Natural Resources Defense Council, Raincoast Conservation Foundation, and World Wildlife Fund Canada) Ecojustice sent a petition calling on the government to issue an emergency order for the species. On May 25 Minister McKenna announced that killer whales face “imminent threats” to their survival, suggesting an emergency order will be issued. This will allow the government to immediately implement protections for this critically endangered species. In the case of greater sage-grouse, the emergency protection order AWA pushed for at the 11th hour turned the tide away from certain extirpation of this species on the Canadian prairies. AWA hopes that recovery of westslope cutthroat trout can occur before the situation becomes as desperate. Yet signs are not yet pointing in the right direction. An Action Plan for westslope cutthroat trout is now more than three years late, despite being legally required under SARA. Meanwhile, threats to the species are real and ongoing, from forestry cutblocks to droughts to damage from off-highway vehicles.

ENGOs such as Alberta Wilderness Association view legal action as a last resort, but history makes it clear that not much is accomplished in Canada without it. AWA's goal is a commonsensical one – to make sure our governments are actually following their own laws and protecting our environments and species at risk. Surely that isn't too much to ask. ♣