



Under Threat

20 Years Since the Saskatchewan Wildlife Act

By Andrea Olive



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About the Author

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Cover photo: Silhouette of moose on a rural road in Wolverine PFRA community pasture, Saskatchewan.
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Introduction

Biodiversity is declining globally. The threats to non-human species are numerous and often include habitat loss and fragmentation, pollution, over harvesting, invasive species, and climate change (WWF-Canada, 2017). In spite of this, Saskatchewan currently has some of the weakest laws for endangered species and habitat protection in the country. Indeed, the grasslands ecosystem is considered one of the most endangered terrestrial ecosystems on earth (Parks Canada, 2017). According to COSEWIC, the national scientific committee that assesses all flora and fauna in Canada, there were 28 special

concern species, 28 threatened, 19 endangered, and 2 extirpated species in Saskatchewan (see Pepper, 2012). In just the past 5 years COSEWIC has added 18 species to the list of at risk flora and fauna with range in Saskatchewan. And yet, the Saskatchewan Wildlife Act — the provincial legislation that classifies species at risk — has not added a single endangered species since the original list was created in 1999. With the 20th anniversary of the Saskatchewan Wildlife Act fast approaching, the weakness of the Act needs to be addressed immediately.



The endangered Burrowing Owl

photo credit: Saskatchewan Burrowing Owl Interpretive Centre

Background

International and domestic efforts to stop species decline is seen across the world, including in Canada. Indeed, Canada and its subnational (provincial and territorial) governments have been classifying and protecting species at risk of extinction for decades. In 1992, at the Earth Summit in Rio, Canada entered into the United Nations Convention on Biological Diversity. This committed Canada, and its subnational governments who have jurisdiction over land and wildlife, to protecting biodiversity, including creating legislation to address species at risk.

In 1996, the provinces, territories, and the federal government convened for the National Accord for the Protection of Species at Risk in Canada. All jurisdictions (except Quebec) agreed to “establish complementary legislation and programs that provide for effective protection of species at risk throughout Canada” (Governments of Canada, 1996). The goals for the complementary legislation were fairly specific in that they included 15 criteria (at right).

These criteria set a high bar for legislation. In 1996 no existing provincial or federal policy came close to meeting even half of these criteria, let alone all 15. In fact, criteria 6 through 14 were virtually unheard of in Canadian policy.

At the time of the Accord, Saskatchewan had already passed the 1981 Wildlife Regulations Act, under Allan Blakeny’s NDP government. This Act dealt exclusively with hunting and fishing regulations in the province. In 1994, Grant Devine’s Progressive Conservative Party passed the Wildlife Habitat Protection Act (WHPA), which was intended to use Crown lands to protect wildlife and habitat while allowing traditional uses of haying and grazing by agricultural lessees. However, it was still illegal to clear, break,

All species at risk laws in Canada should:

1. address all native wild species;
2. provide an independent process for assessing the status of species at risk;
3. legally designate species as threatened or endangered;
4. provide immediate legal protection for threatened or endangered species;
5. provide protection for the habitat of threatened or endangered species;
6. provide for the development of recovery plans within one year for endangered species and two years for threatened species;
7. ensure multi-jurisdictional cooperation for the protection of species that cross borders through the development and implementation of recovery plans;
8. consider the needs of species at risk as part of environmental assessment processes;
9. implement recovery plans in a timely fashion;
10. monitor, assess, and report regularly on the status of all wild species;
11. emphasize preventive measures to keep species from becoming at risk;
12. improve awareness of the needs of species at risk;
13. encourage citizens to participate in conservation and protection actions;
14. recognize, foster and support effective and long term stewardship by resource users and managers, landowners, and other citizens; and
15. provide for effective enforcement.

or drain any of the lands under protection — and it was also illegal to sell the land to farmers or ranchers (or any private entity).

Thus, going into the 1996 Accord, Saskatchewan had little protections in place for any species at risk in the province. But Roy Romanow's NDP government did sign onto the Accord and commit Saskatchewan's government to creating new legislation that would meet those 15 criteria. Wasting little time, his government introduced the Wildlife Act in the Saskatchewan legislature in the spring of 1997. Hon. Mr. Scott, Minister of Environment, opened the second reading of the bill by claiming "Saskatchewan contains one of the most diverse and unique ecosystems in the world. Our lush prairie grasslands, productive wetlands, diverse aspen parklands, and the wilderness forests and lakes in the North are renowned for their beauty and abundance of wildlife." He also specifically pointed out the Wildlife Act is "a result of the Saskatchewan government's commitment to the national accord for the protection of species at risk which was signed with the federal government in November 1996. Saskatchewan is committed to the principles of the accord" (Saskatchewan, Scott, 1997).

There was very little debate in the legislature over the protection of species at risk in the province. From the Conservative Party, Mr. Gantefoer spoke in the House and focused on the ecosystem services that wildlife provides. His party supported the bill because "wildlife, if properly husbanded, is a resource that will continue to provide revenue long after our non-renewable resources are depleted" (Saskatchewan, Gantefoer, 1997). The main debate was actually over the increased cost of hunting licenses in the province through new big game damage provisions in Act. Despite those disagreements, the Wildlife Act passed in June 1997.

The following year there was an Amendment Act, which resulted in the 1998 Wildlife Act. The

changes were exclusively about new penalty provisions — raising the maximum fine to \$100,000 for damage to wildlife. As Hon. Mr. Scott said,

The whole purpose of this Act, Mr. Chairman, is to point out the value of our wildlife — our birds, animals, and such like. And with many species declining in numbers — more and more endangered species — we want to send a message to the public that we will not tolerate crimes, especially organized crimes for profit, trafficking in wildlife (Saskatchewan, Scott, 1998).

These regulations passed without much opposition and the new Wildlife Act received Royal Assent on June 11, 1998. Twenty years later, this is the province's only existing legislation to protect species at risk in the province.

In terms of actual protections, the Wildlife Act defines the categorizations of species (extirpated, endangered, threatened, and vulnerable) and gives the Minister of Environment the legislative discretion to determine how a species is to be classified and whether or not a species is to be added to the official list. After listing, the Minister "may" prepare and implement a recovery plan, but there is no legal requirement to do so. To make decisions, the Minister relies on data provided by the Saskatchewan Conservation Data Centre, an organization formed in 1992 through a partnership with the Ministry of Environment, The Nature Conservancy and The Nature Conservancy Canada. Since 1995, the Centre is housed in the Fish, Wildlife, and Lands Branch of the Saskatchewan Ministry of Environment.

In 1998, the legislature also approved The Wild Species at Risk Regulations, effective January 20, 1999. These regulations named the specific species to be protected under the 1998 Wildlife Act. See Table 1 for a list of species. Extirpated species are those recognized to be native to Saskatchewan but no longer found in the wild. Endangered species are those native wild species

threatened with extirpation or extinction, and threatened species are native wild species likely to become endangered (Wildlife Act, 1998, S.5). For species on the list, the Act makes it illegal

to “kill, injure, possess, disturb, take, capture, harvest, genetically manipulate or interfere with or attempt to do any of those things to any designated species” (Wildlife Act, 1998, S.51).

Table 1: Species Protected on the Saskatchewan Wildlife Act

Common Name	Latin Name	Status on Act
Black-footed Ferret	<i>Mustela nigripes</i>	extirpated
Grizzly Bear	<i>Ursus arctos horribilus</i>	extirpated
Greater Prairie Chicken	<i>Tympanuchus cupido</i>	extirpated
Eskimo Curlew	<i>Numenius borealis</i>	extirpated
Small White Lady’s Slipper	<i>Cypripedium canadum</i>	extirpated
Burrowing Owl	<i>Speotyto cunicularia</i>	endangered species
Piping Plover	<i>Charadrius melodus</i>	endangered species
Sage-Grouse	<i>Centrocercus urophasianus</i>	endangered species
Whooping Crane	<i>Grus Americana</i>	endangered species
Swift Fox	<i>Vulpes velox</i>	endangered species
Sand Verbena	<i>Abronia micrantha</i>	endangered species
Western Spiderwort	<i>Tradescantia occidentalis</i>	endangered species
Tiny Cryptanthe	<i>Cryptantha minima</i>	endangered species
Hairy Prairie-clover	<i>Dalea villosa</i>	endangered species
Slender Mouse-ear-cress	<i>Halimolobos virgate</i>	threatened



Endangered Greater Sage-Grouse

photo credit: Jerret Raffety / Rawlins Daily Times

Comparing Saskatchewan's Policy to Other Provinces

How does the Saskatchewan Wildlife Act compare to other province's species at risk legislation? Table 2 provides a list of legislation over time across Canada. The earliest existing legislation for endangered species in Canada was the 1971 Ontario Endangered Species Act — a law that was updated in 2007 to become one of Canada's more stringent species at risk laws (Olive, 2014). Almost all provinces and territories passed some sort of legislation between 1996 and 2003,

following the Accord. And, as the table shows, very few provinces enacted stand-alone species at risk legislation — instead, many provinces opted to regulate species at risk inside a wildlife act. As of 2018, however, seven subnational jurisdictions now have stand-alone legislation while the remaining six — BC, Alberta, Yukon, Saskatchewan, Nunavut, and PEI — protect species at risk with wildlife acts.

Table 2: Provincial Endangered Species Legislation, 1971 - 2018

Year	Province	Act
1971	Ontario	Endangered Species Act
1973	New Brunswick	Endangered Species Act
1980	British Columbia	Wildlife Act
1984	Alberta	Wildlife Act
1989	Quebec	Act Respecting Threatened or Vulnerable Species
1990	Manitoba	Endangered Species Act
1993	Manitoba	Endangered Species Act – Amendments
1996	New Brunswick	Endangered Species Act
1996	Alberta	Wildlife Act – Amendments
1996	British Columbia	Wildlife Act – Amendments
1997	Quebec	Act Respecting Threatened or Vulnerable Species – Amendments
1998	Nova Scotia	Endangered Species Act
1997	Saskatchewan	Wildlife Act
1998	Saskatchewan	Wildlife Act
1998	Prince Edward Island	Wildlife Conservation Act
2000	Alberta	Wildlife Act – Amendments
2001	Newfoundland	Endangered Species Act
2002	Yukon	Wildlife Act
2002	Federal	Species at Risk Act
2003	Nunavut	Wildlife Act
2004	British Columbia	Wildlife Act – Amendments
2007	Ontario	Endangered Species Act
2009	Northwest Territories	Species at Risk Act
2012	New Brunswick	Species at Risk Act
2014	Manitoba	Endangered Species and Ecosystems Act

Are wildlife acts not as good as species at risk legislation? One way to compare across all legislation in Canada is to examine each province's current existing legislation against the 15 criteria (see page 4) set out in the National Accord. This data is in Table 3. Along the top row is a number that corresponds to the criteria listed above, and the cells are filled with Y for "yes, meets criteria" or N for "no, fails to meet criteria." If we measure the 1998 Wildlife Act against comparable legislation in other the provinces we see that in terms of meeting Accord criteria, Saskatchewan is tied with BC for the second weakest law in the country. However, there is speculation that BC is presently in the process of writing a new species at risk law under its NDP minority government (Collett, n.d.).

The Saskatchewan Wildlife Act does address all native wild species and legally designates them as endangered or threatened while providing immediate legal protection against harm. This comes with effective enforcement. However, the Act fails to meet the other 11 criteria — such as protecting habitat and developing recovery plans. It is arguable that other programs in Saskatchewan do fill the gaps around improving

awareness, encouraging citizen participation, and fostering stewardship by landowners. However, the Wildlife Act itself is silent on these issues.

Strong provincial/territorial laws are crucial for species at risk in Canada because the federal government does not have much jurisdiction over land or wildlife. In 2002, the federal government passed the Species at Risk Act (SARA) after 6 years of consultation and debate in the House of Commons. SARA, which meets the 15 criteria on paper, only applies to species found on federal lands, some migratory birds, and some aquatic species. The federal government does not have the jurisdiction to protect habitat if the land is regulated by a province or territory, which is most land in Canada. The one exception is that SARA includes a "safety-net" clause that empowers the federal government to protect a species inside provincial jurisdiction if the federal Minister of Environment (after consulting with the provincial minister) determines that a province is failing to protect a federally listed species and/or its habitat (see Olive, 2014).

Thus, it is really the provinces that need to create and implement regulations to protect

Table 3: Current ESL Across Provinces/Territories by Accord Criteria

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Totals
YU	2002	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	N	1
SK	1998	Y	N	Y	Y	N	N	N	N	N	N	N	N	N	N	Y	4
BC	1996	Y	N	Y	Y	N	N	N	N	N	N	N	N	N	N	Y	4
QU	1997	Y	N	Y	Y	Y	N	N	N	N	N	N	N	N	N	Y	5
PEI	1998	Y	N	Y	Y	Y	N	N	N	N	Y	N	N	Y	Y	Y	8
AB	2000	Y	Y	Y	Y	Y	Y	N	N	N	N	Y	N	N	N	Y	8
MAN	2015	Y	Y	Y	Y	Y	N	N	N	N	N	N	Y	Y	Y	Y	9
NB	2013	Y	Y	Y	Y	N	N	N	Y	Y	Y	Y	N	N	Y	Y	10
NFLD	2001	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N	Y	N	N	Y	11
NU	2003	Y	Y	Y	Y	Y	N	Y	N	Y	Y	N	Y	Y	Y	Y	12
NWT	2010	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	Y	13
ON	2008	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	14
NS	1998	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	15

species at risk and reverse the downward trend of biodiversity loss across Canada. Saskatchewan, BC, and Yukon having the weakest laws in the country means that a lot of Western ecosystems are potentially at risk. For example, in 2018, the grasslands ecosystem is one of the most endangered terrestrial ecosystems on earth (Parks Canada, 2017). Thus, the weakness of Saskatchewan's Wildlife Act need to be addressed immediately. There are two crucial problems with Saskatchewan's approach to species at risk protection: failure to list species and a failure to protect habitat.

Failure to List Species

As of 2018, the Wildlife Act designates 5 species as extirpated, 9 species as endangered, and 1 as threatened (see Table 1 above). The list of species has not changed since the original list was created in 1999. Not a single species has been added or removed from the list. However, COSEWIC, the national scientific committee that assesses all flora and fauna in Canada and is responsible for making recommendations to the federal government for SARA, considers more species in Saskatchewan to be at risk. As of 2012, COSEWIC data indicated that there were 28 special concern species, 28 threatened, 19 endangered, and 2 extirpated species in Saskatchewan (see Pepper, 2012). As of 2018, COSEWIC classifies 38 special concern species, 33 threatened, 21 endangered, and 2 extirpated species in Saskatchewan. This means in just the past 5 years COSEWIC has added 18 species to the list of at risk flora and fauna with range in Saskatchewan (see SARA registry). Yet, the province's Wildlife Act remains unchanged. The federal government, using COSEWIC data, is adding species to SARA and creating regulatory obligations for the federal government while the province appears to be working under business as usual practices.

For example, there is agreement about the Burrowing Owl — assessed as endangered

by COSEWIC, listed on SARA as endangered, and listed on the Wildlife Act as endangered. However, there is not agreement about the Red Knot or the Greater Short Horned Lizard, which are both classified as endangered by COSEWIC and listed on SARA as endangered, but have no status on the Wildlife Act. Species that are not listed are not protected on Saskatchewan lands, including public and private lands. Nor do unlisted species have habitat designated or recovery plans written and implemented on their behalf in the province. The federal government can protect SARA listed species on federal lands, such as the Grasslands National Park, and can protect migratory birds, such as the Red Knot. It can, and does, create and implement recovery strategies for SARA species but their recovery actions are limited to federal jurisdiction.

In 2007 there was a Canada-Saskatchewan Agreement on Species at Risk. This agreement "does not create any new legal powers or duties" but instead "creates an administrative framework" to streamline the preparation of recovery plans for federal species found on provincial lands (Government of Canada, 2013). The intent is to share information and coordinate recovery processes. The federal government has two major multi-species recovery plans in Southern Saskatchewan — the *Action Plan for Multiple Species at Risk Southwestern Saskatchewan: South of the Divide* and *Multi-species Action Plan for Grasslands National Park of Canada*. Both plans acknowledge Saskatchewan's Ministry of Environment as a cooperative partner in the development of the plan. Similarly, the Saskatchewan recovery plan for the Sage-Grouse, the only recovery plan prepared by the provincial government for a Wildlife Act species, does mention the federal government as a partner. Yet, the two governments continue to act independently of each other and maintain separate lists of species at risk with range in Saskatchewan. Currently, SARA offers protection to 42 endangered and threatened species while the Wildlife Act protects only 10 such species.

Failure to Protect Habitat

The 1998 Wildlife Act does not create any regulations or mechanisms to identify and protect critical habitat for listed species. Instead, Saskatchewan's approach to habitat protection has been through the Wildlife Habitat Protection Act (WHPA) and the Representative Areas Network (RAN). While neither of these are geared specifically toward species at risk, both WHPA and RAN do offer some protections for wildlife habitat.

As mentioned, the 1981 WHPA put Crown land into provincial protection while allowing haying and grazing of the land. However, in 2014 there was a major scaling back of the WHPA. Under a new initiative "that balances economic growth with responsible land management" the province offered agriculture lessees the opportunity to purchase certain parcels of previously protected land (Government of Saskatchewan, n.d.). These lands, even after purchase, are supposed to maintain protection of ecological value, ideally through a conservation easement. However, not all land will have protections in place. In 2014 all land designated under WHPA in the south was evaluated and the government determined that "1.7 million acres have high ecological value and will be retained under WHPA protection; while 1.3 million acres has moderate ecological value and may be eligible for sale with the protection of a Crown conservation easement; and 525,000 acres has lower ecological value and may be available for sale without restrictions" (Government of Saskatchewan, n.d.). This is a major change in how WHPA protects land.

These changes are happening at the same time as federal Prairie Farm Rehabilitation Administration (PFRA) land is being sold. In 2012 the federal government cut the PFRA community pasture program in Saskatchewan and transferred the lands to the provincial government (see Arbuthnott and Schmutz, 2013). Saskatchewan's government decided to lease, and under certain

conditions sell, these lands to private entities, who are supposed to maintain the lands for grazing. However, this is a dramatic shift in the status of these lands and the legal requirements to protect them as habitat. When these lands were federal the national Species at Risk Act was applicable. But when transferred to the province and then leased to private grazing corporations, these lands — and the species they support — lost protection. Between WHPA sale and PFRA sales the landscape in Saskatchewan is shifting.

Outside of WHPA, Saskatchewan also created the RAN to protect habitat for wildlife. The program, started in 1998-1999 under Roy Romanow's NDP government, was meant to create a network of "ecologically important land and water areas across the province" and manage the land as parks, ecological reserves, wildlife lands, and other reserves (Government of Saskatchewan, n.d (b)). The areas are meant to protect habitat for wildlife while at the same time providing recreational spaces for the public.

In the first 5 years of the RAN program there was modicum success at increasing the total protected lands across the province. However, with the



Sign for the Fairview PFRA Community Pasture near Fiske, Saskatchewan. photo credit: Branimir Gjetvaj

changes to WHPA and the transfer of PFRA lands, the province's protected areas began to decline again. It is estimated that "with those changes, our protected area percentage drops from 8.7 to 6.34%" (Herriot, 2016). This is significant because through the United Nations Convention on Biological Diversity, Canada committed to protecting 17% of its terrestrial area by 2020. At the end of 2016, only 10.5% of terrestrial area was under protection — and almost half is

protected by the federal government. Across the provinces, the amount of protected area varies significantly — from as much as 15.3% in BC to as little as 3.2% in PEI (Government of Canada, 2017). The Prairie region, along with the Boreal Plains and Taiga Plains, represent one of the least protected areas in the country. If you combine a weak Wildlife Act with very little protected areas, a problem with species at risk quickly emerges in Saskatchewan.

Conclusion

It is not surprising that the first use of the "safety net clause" under the federal Species at Risk Act was used to protect a prairie species in Saskatchewan and Alberta — two provinces with weak Wildlife Acts and little habitat protection. In 2013, an emergency order was invoked for the Greater Sage-Grouse. The federal government offered immediate protection to the bird under SARA on non-private lands. In doing so, it signaled to Canada, and the world, that Saskatchewan is failing to protect the habitat of this species. Unfortunately, Saskatchewan has a long history of failing to protect species and their habitats.

In 1887, Lieutenant Governor David Laird proclaimed "An Ordinance for the Protection of the Buffalo" in the North West Territories. He did so from the then capital of the Territories, Livingstone, Saskatchewan. This ordinance is considered one of the Canada's first pieces of environmental legislation — it was "an attempt to save one of the iconic creates of the northern plains" (Waiser, 2016, 499). It is the first Canadian law on record to protect a species threaten with

extirpation and perhaps extinction. Within a year the ordinance was rescinded due to difficulties enforcing it. But it did not matter anyway — the intentions for protection came too late and the pressures on the bison were too immense. By 1879, the bison were gone from the Prairies.

The Greater Sage-Grouse might follow the same fate as the bison — retreating across the Medicine Line seeking refuge in the United States. Many song birds may be forced to follow. But for other species, it is not too late. Saskatchewan can create species at risk legislation that lists and protects species as well as their habitat. The province can fulfill its commitments to the National Accord and help Canada to meet its protected areas targets. Both the NDP and the Progressive Conservatives were right 20 years ago in claiming that Saskatchewan "contains one of the most diverse and unique ecosystems in the world" where wildlife "is a resource that will continue to provide revenue long after our non-renewable resources are depleted." The time to act is now.

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