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Alberta Releases Draft Woodland Caribou Range Plan: Pie in the Sky

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Matter Commented On: Alberta Draft [Woodland Caribou Range Plan](#)

In late December, Alberta issued its draft [Woodland Caribou Range Plan](#). The Government is seeking public input on the content of this Caribou Range Plan, and is hosting several in-person community sessions over the next couple of months. For more detail on how to submit your comments or attend one of the face-to-face sessions, see [here](#). The Caribou Range Plan has been issued by Alberta in response to the federal Woodland Caribou [Recovery Strategy](#) issued in 2012 pursuant to the *Species at Risk Act*, [SC 2002 c 29](#). The federal Recovery Strategy called upon the provinces to develop range plans by October 2017 to demonstrate how they will protect caribou habitat in their respective jurisdictions. The primary reason for why a federal strategy would rely on provincial action to meet its objectives is because the majority of caribou habitat in Alberta falls on provincial lands, and SARA has very little application on provincial lands. This comment explores the legal framework for the Caribou Range Plan and the content in the draft.

Woodland caribou have been listed as a threatened species since 1987 under the *Alberta Wildlife Act*, [RSA 2000 c W-10](#). As recently as the 1960s, the Alberta population was estimated at between 6000 and 8000 individuals. Rough estimates today have the total provincial population at about 2000 individuals, and a 2013 [paper](#) published in the *Canadian Journal of Zoology* concluded that the Alberta population is now declining by approximately 50% every 8 years. The causes for this steep decline are widely considered to be the destruction of habitat from forestry and energy development (along with the associated linear disturbances) and vulnerability to predators (wolves). An online [mapping tool](#) produced by the [Alberta Wilderness Association](#), illustrates the impact of resource development on caribou habitat in the Chinchaga range of Alberta which has taken place since the federal Recovery Strategy was issued in 2012.

A full 30 years has passed since caribou were listed as threatened in Alberta, and the species still awaits meaningful legal protection. In the meantime, Alberta has tackled the low-hanging fruit by closing the hunting season and instigating a wolf cull. The caribou population is now in steep decline because the province refuses to address habitat destruction resulting from resource development in the boreal forest. Alberta produced a caribou recovery plan in 2004, but politicians and senior bureaucrats did not accept its recommendations for a moratorium on further resource dispositions in caribou habitat. So now the caribou remain in Alberta only as small, disconnected, and fragmented population patches. As a species that remains only as a series of population islands, the caribou are not just threatened they are one step away from extirpation in this province.

Woodland caribou habitat is old-growth forest, primarily for the lichen which makes up the majority of their diet. Commercial logging in what is left of Alberta's old-growth boreal forest is

clearly incompatible with the recovery of Alberta's woodland caribou population. Linear disturbances (access roads and seismic lines) associated with non-forestry resource development exacerbates habitat loss in areas subject to forestry tenures, and makes caribou even more vulnerable to their competitors and predators. Given the extensive and layered resource dispositions across northern Alberta, it is no surprise woodland caribou are on the fast path to extirpation under Alberta's watch.

Enter the federal *Species at Risk Act* [SARA]. SARA is the brightest light in Canada's network of endangered species law, but it is nonetheless a dim light. Sure the Federal Court has issued several rulings that have given SARA some legal bite, but federal officials drag their feet at every turn and there is only so much capacity in environmental groups and First Nations to hold federal officials to account with litigation to enforce every nook and cranny of SARA obligations to ensure federal officials take action on species recovery and protect critical habitat. As federal legislation, SARA also has limited application for species which reside on provincial lands. Woodland caribou are an excellent illustration of these limitations in SARA. The federal Recovery Strategy appeared only after litigation was commenced by environmental groups and First Nations seeking mandamus for a strategy that was more than 6 years overdue, and the strategy itself relies almost entirely on provincial action to implement its objectives.

The 2012 federal Recovery Strategy establishes critical habitat for caribou as a minimum threshold of undisturbed lands. The key passage in the Recovery Strategy is:

This recovery strategy identifies a minimum of 65% undisturbed habitat in a range as the disturbance management threshold, which provides a measurable probability (60%) for a local population to be self-sustaining. This threshold is considered a minimum threshold because at 65% undisturbed habitat there remains a significant risk (40%) that local populations will not be self-sustaining.

Habitat disturbance within a range needs to be managed by the responsible jurisdiction at a level that will allow for a local population to be self-sustaining. As there is variation in habitat and population conditions between boreal caribou local populations across their distribution, for some ranges it may be necessary to manage the range above the 65% undisturbed habitat threshold, while for others it may be possible to manage the range below the 65% undisturbed habitat threshold. However, there must be strong evidence, validated by Environment Canada, from population data collected over an extended period of time to support the management decision to establish a lower range-specific threshold (i.e. the lag effects of disturbance on a local population have been considered and accounted for).

In the absence of strong evidence to support lowering the undisturbed habitat threshold below 65%, the amount of critical habitat for all ranges is at least 65% undisturbed habitat.

The maps provided in the Recovery Strategy clearly identify Alberta as the jurisdiction where woodland caribou populations are in the most severe decline.

Alberta's Caribou Range Plan will serve as the action plan for woodland caribou recovery in this province. There is also a proposed federal action plan issued pursuant to section 47 of SARA, however it essentially delegates all necessary action on habitat protection to Alberta. The proposed federal action plan employs strong language to suggest that in the absence of effective habitat protection by Alberta, the federal government may exercise its SARA powers to apply the federal legislation onto provincial lands (e.g. under section 61 the Governor in Council, upon the recommendation of the applicable Minister, may order that the SARA prohibition against destroying critical habitat for a listed species applies to provincial lands). But these are visions of pure fantasy. No one seriously believes the federal government will do this, instead they will likely enter into a section 11 SARA conservation agreement with Alberta that will follow the "manage and mitigate" course of action outlined by the draft Alberta Caribou Range Plan (the prospect of a section 11 agreement is more or less acknowledged in the October 2017 [progress report](#) on steps taken to recover woodland caribou recovery posted to the SARA registry).

Which brings us to the Alberta Caribou Range Plan. How close will it get us to 65% undisturbed caribou habitat? Does it offer any prospect of effective legal protection for caribou habitat? Does it chart a path that is any different in substance from what Alberta has done since 1987?

Measures to protect and restore caribou habitat make up the bulk of the Plan, starting at page 24. The Plan acknowledges that all caribou ranges within Alberta are well below the 65% threshold, with numerous ranges currently at less than 10% undisturbed (Figures 8 and 9). There is plenty of restoration work to be done. Restoring legacy seismic lines is noted as a priority (at pp 31-34). Habitat restoration work on legacy disturbances is needed, but it will take decades for regrowth to establish itself in these areas, and meanwhile the Plan allows for new disturbances in caribou habitat. Allowing new disturbance before old disturbance is restored increases risk to caribou, whether or not new disturbance actually avoids disturbing areas which are under restoration. As well, in the absence of legal rules to manage and reduce overall access, there is substantial risk that restoration efforts will be wasted by subsequent new access nearby, as has happened time and again in Alberta.

So what about those legal rules? The Plan lists terms and conditions which the Alberta Energy Regulator can impose to minimize the footprint of new seismic activity in caribou ranges (at page 35). Whether the substance of these proposed terms are stringent enough to maintain undisturbed habitat is doubtful, and in any event relying on the Alberta Energy Regulator to implement and enforce these terms seems like pie in the sky. The Plan includes positive steps such as requiring new pipelines to use existing right-of-ways and ensure residual corridors are less than 4 metres in width (at page 37), but leaving the implementation and enforcement of these terms to the Alberta Energy Regulator – once again – seems like pie in the sky. The Plan includes positive steps to require new energy development to be located in close proximity to existing road networks although the stated proximity of 200 metres may not be close enough to maintain undisturbed habitat (at pp 44-47), but nonetheless implementing this step with planning regulations that require access plans to be approved and enforced by Alberta Environment, Alberta Forestry, or the Alberta Energy Regulator – once again – seems like pie in the sky. There is a common theme here which I will return to in a moment.

The most significant shortcoming in the Plan may be that it allows for significant continued industrial logging in already excessively disturbed critical habitat for woodland caribou in the boreal forest. There is no doubt that this concession alone will significantly impair the Plan's objectives for caribou recovery in Alberta, since forestry is already known to be the greatest threat to caribou habitat and loss of habitat is the greatest risk to the survival and eventual recovery of the population. The Plan merely calls on forestry companies operating in caribou ranges to prepare spatial harvest sequences within their Forest Management Plans to meet caribou habitat requirements, and states that Alberta Forestry may impose additional terms and conditions into harvesting plans and operating ground rules (at pp 49-52). While transparency is not a strong suit for Alberta Forestry, I am not aware of a single Forest Management Plan that has terms and conditions that would effectively prevent the destruction of critical habitat and I won't hold my breath waiting for Alberta Forestry to actually amend any existing Forest Management Plans to incorporate caribou protection measures. Once again this seems like pie in the sky.

Alberta keeps talking about taking real measures to address threats to critical habitat for caribou, but it is all just pie in the sky in my opinion – an impossible, unlikely or fanciful idea or plan. The proposed measures in the Caribou Range Plan really confirm this. None of the above-mentioned departments or agencies slated for approval, monitoring or enforcement responsibilities in the Caribou Range Plan has a credible track record on environmental monitoring and enforcement. So to the extent the Caribou Range Plan relies heavily on these departments and agencies to implement legally binding rules that will allow the Plan to realize its habitat protection objectives, the Plan is almost certain to be a failure.

The Caribou Range Plan states it will be legally implemented as a sub-regional plan under the *Alberta Land Stewardship Act*, [SA 2009 c A-26.8](#). In short, what this means is that the legal bite of this Plan will actually depend on the content of the implementing regulation issued by Order-in-Council some time down the road when it is time to implement the Plan. Until that day arrives, we will not really know what provisions in the Plan are binding law. History strongly suggests however, that Alberta Environment, Alberta Forestry, and the Alberta Energy Regulator will retain extensive discretion on whether and how to impose the terms and conditions called for in the Plan. Whether these terms and conditions are real law or soft suggestions will depend entirely on how discretion is exercised by these departments and agencies. Nothing that has happened over the past several decades on the caribou file would suggest this Plan will result in legally binding rules that protect caribou habitat and hold both provincial officials and resource development companies accountable when the Plan fails to achieve its objectives.

This is the Alberta way when it comes to the conflict between endangered species protection and resource development. It is what you get in the absence of effective provincial endangered species legislation (such as what is proposed [here](#)). Very little transparency, accountability, or predictability, and almost no results on species protection and recovery outside of legislated wildland parks and wilderness areas. What I wrote back in 2010 in [Endangered species under Alberta's Wildlife Act: Effective Legal Protection?](#) remains true today: Legal protection for endangered species such as woodland caribou habitat is possible in Alberta under the guidance of documents such as Caribou Range Plan, but it is not very likely either.

Thanks to Carolyn Campbell – Conservation Specialist with the Alberta Wilderness Association - for her comments on a draft of this post and for providing me with some of the references noted. The Alberta Wilderness Association provided the Alberta government with its [comments](#) on the draft Caribou Range Plan earlier in January.

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