

March 23, 2018

Alberta Suspends Habitat Protection Plans for Endangered Woodland Caribou

By: Shaun Fluker

Case Commented On: Minister of Environment and Parks March 19, 2018 Letter re: Alberta Draft [Woodland Caribou Range Plan](#)

On March 19 the Minister of Environment and Parks issued a letter stating Alberta is suspending plans to designate additional protected areas for endangered caribou habitat to allow for a further review of the socio-economic costs associated with implementing Alberta's draft Woodland Caribou Range Plan. The Minister indicates this decision is in response to concerns raised in community consultations (see [here](#)) about the economic impacts of the proposed caribou protection and recovery measures in the Plan. There is also a not-so-subtle message from the Minister that if the federal government wants to see action on the caribou file, there needs to be a significant infusion of federal cash. However, the overall message here is the abdication of responsibility for protection and recovery of caribou. My intention in writing this short comment is to highlight where the Minister places an incorrect gloss on the law to conceal this failure to act.

I commented on the Caribou Range Plan in [Alberta Releases Draft Woodland Caribou Range Plan: Pie in the Sky](#), and therein provided a brief overview on the decline of caribou in Alberta and summarized the critical habitat designation set out in the federal Woodland Caribou [Recovery Strategy](#) issued in 2012 pursuant to the *Species at Risk Act*, [SC 2002, c 29](#) [SARA] which forms the basis for Alberta's Caribou Range Plan. I also explained why a federal recovery strategy would rely on provincial action to meet its objectives - because the majority of caribou habitat in Alberta falls on provincial lands and SARA has very little application on provincial lands. I criticized the proposed recovery and protection measures in the Caribou Range Plan as pie in the sky, since none of the provincial 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. The Caribou Range Plan proposes to rely on these departments and agencies to implement legal rules that will allow the Plan to realize its habitat protection objectives, and as such the Plan is almost certain to be a failure.

Ironically though, the component of protection and recovery measures in the Plan which escaped my criticism in Pie in the Sky was the proposed designation of new or expanded protected areas for caribou habitat (Plan at 55-61) in northern Alberta. I didn't feel there was much to be added here in terms of commentary, and in any event I felt these designations would be unlikely to either make or break caribou recovery efforts. But here we are in late March 2018, and the Minister has pulled these proposals off the table. So either these new protected area designations are more significant than I've given them credit for, or there is much more to this letter than simply whether Alberta goes ahead with these designations. I suggest it is the latter.

The tenor of this letter demonstrates Alberta has little intention of completing its Caribou Range Plan. This comes as no surprise to me since the proposed measures are sure to fail to meet their objective anyways. What is disappointing to me here is that even under the NDP reign, the Alberta government still pretends it is serious about protecting and recovering endangered species but refuses to do just about anything meaningful in relation to the most important step in the process – which is to protect critical habitat.

With this letter, the Minister directs blame at SARA for the caribou problem and purports to shift responsibility to the federal government to fix it. In what follows, I address each of the Minister's key points on the legal basis for Alberta's position (set out with underline), with some clarification or correction on my part.

Alberta views caribou recovery as a shared responsibility between federal and provincial governments ... Alberta believes the federal government needs to play a greater role in supporting Alberta to understand the true impact of caribou range plans in Alberta communities. Yes, caribou recovery like any other environmental goal is a shared responsibility of all levels of government in Canada. But it is also the case that caribou populations which remain in Alberta are primarily the responsibility of the provincial government. They reside on provincial crown land, and Alberta has the upper hand in legal authority to halt the decline of caribou and restore their populations in this province. As I wrote back in 2010 in [Endangered species under Alberta's Wildlife Act: Effective Legal Protection?](#), wildlife and its habitat are by and large property of the provincial Crown, and it is a general principle of constitutional law in Canada that the federal government cannot in substance legislate over provincial property under the guise of a regulatory scheme. So while federal legislation is welcome, its role here is limited and any meaningful attempt to protect an endangered species will require effective provincial legislation. Something Alberta is lacking under the *Wildlife Act*, [RSA 2000, c W-10](#).

In order to meet the federal government's targets ... The investment required to fulfill the federal requirements ... Alberta understands the pressure the Federal Government is under with respect to the federal Species at Risk Act and the need to take action on Caribou recovery. Let us not forget that the caribou has been listed as a threatened species in Alberta since 1987, and yet the Alberta government has previously rejected the recommendations of wildlife experts to impose a moratorium on industrial activities known to be the cause for the steep decline in caribou over the past several decades. The only reason there are federal targets on caribou is to fill a gaping void in Alberta law and policy. Federal requirements on caribou? What requirements? The proposed federal action plan issued pursuant to section 47 of SARA essentially delegates all necessary action on habitat protection to Alberta – which it should since that protection will fall on provincial Crown land. Sure 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. But this has never happened, and any attempt by the federal government to do so will be subject to a decade of litigation. By then the caribou could very well be extirpated from Alberta. And urgency on the part of the federal government regarding SARA? I have to say that is news to me, and I should know having enjoyed the “privilege” of observing federal officials in action under SARA. Urgency and pressure are not the words that come to mind. Federal officials drag their feet at

every turn, making the implementation of SARA one of the most disappointing aspects of Canadian environmental law.

Finally, we have the statement that Albertans deserve a plan that protects their jobs and the economy. But isn't the Caribou Range Plan about protecting the caribou?

Instead of pointing the blame elsewhere and continuing to pretend Alberta has any intention of restoring caribou populations, I'd rather the Minister had simply stated Alberta waited too long to address this problem and now can't afford to protect and recover caribou and since the Province has no legal obligation to ensure the survival of caribou it is simply going to let the species disappear. Not a happy message, but it speaks the truth.

This post may be cited as: Shaun Fluker "Alberta Suspends Habitat Protection Plans for Endangered Woodland Caribou" (23 March, 2018), online: ABlawg, http://ablawg.ca/wp-content/uploads/2018/03/Blog_SF_Caribou_Range_Plan.pdf

To subscribe to ABlawg by email or RSS feed, please go to <http://ablawg.ca>

Follow us on Twitter [@ABlawg](https://twitter.com/ABlawg)

