The Implementation Gap: Wetland Loss & Management in the Province of Alberta

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Alberta, Canada
Population: 4.1 million
Area: 661,848 km²

New Zealand
Population: 4.4 million
Area: 268,021 km²
Alberta’s Environmental Policy
“Decision making is not a technical exercise ... but an inherently political process.”

(Hessing et al. 2005)
“The decisions of street-level bureaucrats, the routines they establish, and the devices they invent to cope with uncertainties & work pressures effectively become the public policies they carry out.”

(Lipsky 1980)
Agency Decision Making

Bureaucratic Discretion
Agency rule-making & daily practices of ‘street-level bureaucrats’

Agency Capture
When a regulatory agency acts in ways that benefit the industries it regulates, rather than the public
Agency Decision Making

**Bureaucratic Discretion**
Agency rule-making & daily practices of ‘street-level bureaucrats’

**Agency Capture**
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Measured through:

**Bureaucratic Slippage**
Difference between what the government ‘says’ & what it ‘does’

“The tendency for broad policy statements to be successively reinterpreted, both over time and across multiple layers of regulatory implementation”

*(Freudenburg and Gramling 1994)*
The Mitigation Sequence

- Avoidance and minimization are the primary strategies for managing impacts.
- Avoidance and minimization reduce or eliminate the need for compensation.

➤ How well do we avoid wetlands as part of this policy approach?
Avoidance Avoided

“‘I’ve never encountered somebody saying ‘no, don’t touch this wetland’... so I always skip right to compensation.”

(Environmental Consultant)
The Failure to Avoid

Key Factors:

1. Lack of agreement on what constitutes “avoidance”
2. Poor planning in advance of development
3. Economic undervaluation of wetlands
4. “Techno-arrogance” abounds in the view of wetland restoration
5. Inadequate enforcement and compliance

(Clare et al. 2011)
Lack of Enforcement & Compliance

85% of losses were unpermitted

<table>
<thead>
<tr>
<th>No. of Wetlands</th>
<th>Detected Loss</th>
<th>Permitted Loss</th>
<th>Illegal Loss (%)</th>
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<tbody>
<tr>
<td>242</td>
<td>37</td>
<td>85</td>
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(Clare & Creed 2014)
Compensation Outcomes in Alberta

Guidelines for:
- Types of acceptable compensation
- Compensation location
- Compensation ratios

Calculated (1999-2010):
- In-kind vs. out-of-kind compensation
- Watershed of impact/compensation
  - Displacement distance
  - Min, max & average ratios

(Clare & Krogman 2013)
Slippage in Wetland Compensation

- Compensation sites are located outside the watershed of impact 80% of the time.
- Compensation sites were located >80km from the site of impact in 49% of cases, with no commensurate increase in compensation ratios.
- Natural wetlands often replaced out-of-kind (e.g., marshes replaced with storm ponds).
- Decisions appear to be driven by a desire to make the process “fair” and “reasonable” for the proponent.

(Clarke & Krogman 2013)
Mechanisms of Agency Capture

**Individual Factors**
- Relationships b/t actors
- Incentives

**Structural Factors**
- Rules of the system
- Agency design

**Bureaucratic Discretion**

**Agency Capture**

**Bureaucratic Slippage**

(Clare & Krogman 2013)
Mechanisms of Agency Capture

- Bureaucratic Discretion
- Agency Capture
- Bureaucratic Slippage

Political control of agency design and oversight

- Resource allocation

“Half of our regulatory process, to be honest, is trying to manage workload, because we simply do not have the kind of resources to bring to bear on this.”

*(Department of Environment)*

(Claire & Krogman 2013)
The extent to which a goal allows leeway for interpretation

• Mission comprehension
• Fuzzy mandates
• Goal prioritization

“The Water Act states two goals: sustaining ecosystems and allowing economic options. That's hard to do. Typically if you're allowing something that will benefit the economy, it's at a detriment to the environment.”

(Department of Sustainable Resource Development)
Mechanisms of Agency Capture

Privileged Accounts → Control over issue definition and public discourse

Bureaucratic Discretion

• “Balance” Discourse
  - Framing of the debate as “environment vs. jobs”, which detracts from more substantive policy discussions
  - Agency decisions and practices are constrained by expectations around how personnel are “allowed” or “expected” to behave

Agency Capture

Bureaucratic Slippage

(Clare et al. 2013)
Other Examples of Capture in Alberta

- There is no public consultation process when Crown-owned oil and gas rights are sold

- Restricted interpretation of directly and adversely affected: limited means to trigger a hearing for projects on public land

- Creation of a single “arms length” regulator for oil and gas projects in 2013
  - Former oil and gas executive and founding president of Canada’s largest oil & gas lobby group appointed as Chair
Capture & the Federal Government

• Bill C-38 - omnibus budget bills that included substantial changes to federal law without public consultation

  • **Canadian Environmental Assessment Act:**
    - Number and scope of environmental assessments reduced
    - Restriction of public participation to “interested parties”

  • **Fisheries Act:**
    - Long list of exempted activities
    - Elimination of habitat protection provisions

  • **Income Tax Act:**
    - Ability to revoke charitable status for organizations who devote >10% of resources to “political activity”
    - Recent audits have targeted environmental groups
A Collective Action Problem?

- Selective participation by vocal and well organized interest groups that receive direct benefits (usually economic)
- “Costs” of policy failure are spread across non-mobilized public
- Benefits of engagement by individuals are small relative to the costs, leading to low participation and free-rider problems

(Rydin and Pennington 2000)
Overcoming Collective Action Problems

1. Restrain opportunistic behaviour through sanctions

2. Change the incentives for individuals and groups to engage
   • Reduce the “costs” of participation (knowledge & resources)
   • Increase direct benefits (economic and social)
   • Penalize non-participation to overcome the free-rider problem

   ▪ These objectives can be achieved in part by building social capital
Increasing Social Capital – A Role for ENGOs?

• Social capital encompasses:
  ▪ Local knowledge
  ▪ Networks (extent, density)
  ▪ Trust
  ▪ Norms of routine behaviour (formal and informal rules, obligations, expectations)

• Social capital can be cultivated through grass-roots co-operation or mediated by ENGOs
Improving Environmental Policy Outcomes

• Many of the problems that lead to agency capture and slippage are administrative & political in nature

• Institutions may need to be restructured and “opened up” if improved outcomes are desired:
  ▪ Address power asymmetry between private & public interests
    • restructuring arenas of interaction
    • re-defining the roles of actors within interactions
    • changing the language of interaction
  ▪ Build social capital within communities and groups to counter the influence of private interests
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