



Ottawa Acted Unlawfully in Failing To Address Backlog of Overdue Species-at-Risk Recovery Strategies

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The Federal Court declared in a [decision](#) released February 14, 2014 that two federal departments acted unlawfully in failing to meet statutory deadlines for the release of recovery strategies for four species-at-risk. Ecojustice brought the lawsuit on behalf of five environmental groups concerned that industrial development in British Columbia threatens habitat critical to the species survival. The Court found that the delays are “just the tip of the iceberg”, indicating “an enormous systemic problem” within the relevant departments. Government witnesses acknowledged that they are behind schedule on developing recovery strategies for another 167 species-at-risk. All four species could potentially be adversely affected by the proposed Northern Gateway pipeline and resulting tanker traffic.

The Court determined that the departments had not complied with statutory timelines for the preparation and publication of recovery strategies as set out in the federal *Species at Risk Act* (SARA). The Minister of Fisheries and Oceans missed deadlines for strategies to protect the Nechako River population of white sturgeon and the North Pacific population of humpback whale. The Minister of the Environment missed deadlines for the marbled murrelet (a small Pacific seabird) and the southern mountain population of woodland caribou.

The Government’s lawyers argued that the lengthy delays could be ascribed to

- ◆ preparing new policies and administrative structures
- ◆ “organizational capacity issues”, including staff turnover
- ◆ stakeholder consultations
- ◆ scientific challenges in identifying critical habitat for each species and
- ◆ incorporating evolving case law on endangered species into deliberations.

However, they denied that the recovery strategies had been intentionally delayed to facilitate industrial development.

Requirements Under SARA

The Minister of the Environment or the Minister of Fisheries and Oceans (in the case of aquatic species) must, under section 37 of SARA, prepare a proposed recovery strategy for each species identified as being endangered, threatened or extirpated. Recovery strategies must address the threats to the survival of the species, including any loss of critical habitat. The strategies must also be published within one to four years, depending on the status of the species and when it was listed. A final recovery strategy must be published shortly thereafter.

The Court concluded:

“It is simply not acceptable for the responsible Ministers to continue to miss the mandatory deadlines that have been established by Parliament. In the circumstances of these cases, it is therefore both necessary and appropriate to grant the applicants the declaratory relief that they are seeking, both as an expression of judicial disapproval of the current situation and to encourage future compliance with the statute by the competent ministers.”

Proposed Strategies

In response to the lawsuit, the federal government issued proposed strategies for the white sturgeon, humpback whale and murrelet just before the hearing was to commence. However, the strategies came years after they were originally due. The proposed strategy for the woodland caribou was posted shortly after the hearing concluded in January 2014, six-and-a-half years late.

The Court will oversee the process to ensure the final recovery strategies are produced in a timely fashion.

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