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## Feds Stung By Eco-Ruling

Environment Canada and the Department of Fisheries won't say if they will appeal a stinging Federal Court judgment that they broke the law in failing to protect threatened and endangered species.

Authorities at both departments declined interviews in the case that saw a judge side with environmental groups in citing regulators for failing their "public duty" with unacceptable misconduct. "The department is reviewing the Court's decision to determine the next steps," said a fisheries spokesperson.

Justice Anne Mactavish found regulators failed to comply with their own *Species At Risk Act* in meeting deadlines to save British Columbia wildlife in peril. Environmental groups accused the departments of delays to avoid conflict with expanded oil exports from B.C.

"The federal government blasted through deadlines required by Parliament," said Sean Nixon, attorney with Ecojustice and lead counsel in the case; "The delay is unacceptable."

Parliament enacted the *Species At Risk Act* in 2003 to ratify a United Nations *Convention on Biological Diversity*, signed by cabinet eleven years earlier. Under the law, cabinet must promptly develop recovery plans for species at risk as named by the Committee On The Status Of Endangered Wildlife In Canada, a scientific panel.

"This isn't just a technical breach of the statute," Nixon said. "The timelines are there for a reason: delay harms species. The longer you wait to address a problem, the more the species declines." However in four test cases litigated by Ecojustice the departments missed the deadlines by years:

Nechako White Sturgeon, listed as endangered by scientists on August 15, 2006, required the Department of Fisheries to release a recovery strategy within three years. By September 25, 2012 the plan still had not been posted, and was only finalized last December after the department was sued;

Pacific Humpback Whale, listed as a threatened species on January 12, 2005, requiring a recovery strategy to be finalized within four years; instead the fisheries department waited till last October 21 to complete the plan;

Marbled Murrelet, a small coastal bird, listed as threatened on June 5, 2003 with a recovery strategy due by law no later than September 6, 2007; instead Environment Canada waited till after it was sued and only published a recovery plan on January 7, more than six years late; Southern Mountain Caribou, listed as threatened on June 5, 2003 with a final strategy due September 6, 2007; Environment Canada finally complied on January 17.

“To state the obvious, the *Species At Risk Act* was enacted because some wildlife species in Canada are at risk,” wrote Justice Mactavish; “Many are in a race against the clock as increased pressure is put on their critical habitat, and their ultimate survival may be at stake”; “It is simply not acceptable for the responsible Ministers to continue to miss the mandatory deadlines that have been established by Parliament.”

The Sierra Club of B.C. Foundation, which joined the lawsuit, noted the government failed to act as required in drafting recovery plans for some 167 other species in peril.

“It is unacceptable for the federal government to not comply with its own laws,” said Caitlyn Vernon, Sierra Club campaigns director; “More than 160 species at risk across Canada are still waiting for the release of their recovery strategies. What is at stake here is the survival of some of these iconic species.”

Other groups involved in the lawsuit were the Western Canada Wilderness Committee; David Suzuki Foundation; Greenpeace Canada; and Wildsight. Cabinet was ordered to pay their \$22,500 legal costs.

By Kaven Baker-Voakes 🇨🇦🇨🇦