

# Why did the fish miss the boat?

**ARNE MOOERS**

Scientists and lawyers both know the devil is in the details. Last week, when Environment Minister David Anderson announced the historic first update to Canada's official list of endangered species, details about the process of protection threatened to bedevil our best intentions.

Under Canada's newly minted Endangered Species Act, the government officially recognized 79 of 91 species that Canada's scientists had officially decided were at risk. We scientists applaud this landmark step — but we're very concerned for the 12 unfortunates (all aquatic, most fish) who did not make it on to the list. The public should be concerned, too.

These species include harbour porpoises and bottlenose whales, which die in nets set for other species off the Atlantic coast; several populations of Atlantic cod, all at historic lows; a Lake Winnipeg snail threatened by pollution and development, and some Fraser River salmon. We fear that a loophole in the law's implementation is being used to purposefully delay what was originally envisioned as a balanced process. We fear that after such lengthy deliberation about how best to navigate society's responsibilities to both its natural environment and its citizens, Canada's ark risks taking its maiden voyage half-empty.

The future seems straightforward for the endangered species lucky enough to be included (if anything endangered can be considered lucky): The government has nine months to consult with relevant agencies, organizations and the public, and then to decide whether to allow that species to remain on the list. If it stays, then an official strategy for the recovery of the species must be prepared for the government, and following that, a plan of action.

This third step is critical, because it must include a full analysis of the social and economic impacts of proposed interventions (for instance, projected costs to fishermen for changing behaviour, temporary job losses, costs and benefits of habitat remediation). The action plan is to be written by those in the

know. It will rank what needs to be done and put a price tag on each step. This is followed by hard decisions by the government. (Of course, officially listed species can still be neglected — given space on the ark, but then starved.)

So much for those waving feebly from the ark. What about the creatures left behind? We were adamant that the listed species be dealt with quickly and transparently, and that clear reasons be given if governments removed them from the list. Delay can be deadly. Indeed, because the legislation is so new, the list presented last week is long overdue — the official scientific assessments for many of the species were made almost a year ago.

But one critical loophole may be timing — when the government receives the assessment, and so, when the nine-month timeline kicks in.

Mr. Anderson is the person who receives the assessment from the scientific body, and he is expected to pass it on to a cabinet subcommittee. However, if he doesn't pass a name on, the name isn't "received," and the species is left in legal limbo. If a species isn't put on the list, it can't be taken off.

The relevant department, Fisheries and Oceans, has already consulted widely on the 12 unfortunates left off this first list. These species may have been left off because dealing with their plight would be politically controversial. But without a proper action plan, we don't know what the impact of intervening, or of not intervening, may be. We can't get a proper evaluation if the species isn't listed.

The scientific community fought bitterly that the listing of species be based on evidence (science), and agreed that delisting might be based on other (read economic) considerations. This would clearly separate the two responsibilities. In this first historic update of the endangered species list, we see that the timing loophole allows economic considerations to be used to leave a species in an unlisted limbo.

For Canadians who watched the Atlantic cod fishery and a way of life collapse because of government malpractice, the decision not to even start the process for important species is wrenching. It is not in the spirit of the law. It sets a bad precedent. And it dismays those of us who cheered the ark's launch a year ago.

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