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Federal Court overturns Minister's decision not to recommend emergency protection for caribou

EDMONTON — The federal Environment Minister's "out of the blue" decision not to recommend emergency protection for woodland caribou in northeastern Alberta ignored scientific evidence and must be set aside, the Federal Court said late yesterday.

Environment Minister Peter Kent must now reconsider the government's position on emergency protections for the caribou.

The Federal Court recognized that scientific evidence indicates the caribou face threats to their survival.

"Given the evidence, and the court's decision, the only reasonable conclusion Minister Kent can come to is that he must recommend emergency protection for the caribou," said Melissa Gorrie, the Ecojustice staff lawyer who appeared at the hearing. "He has a second opportunity to give this iconic animal a chance for survival."

Ecojustice, on behalf of the Pembina Institute and Alberta Wilderness Association, had sought a court order to force Minister Peter Kent to recommend emergency protection of critical habitat for threatened caribou herds in northeastern Alberta.

In its decision, the Federal Court also acknowledged that a Recovery Strategy for the woodland caribou is four years overdue, and gave the Minister of Environment until September 1, 2011 to release a draft of the strategy.

Protections for caribou in northeastern Alberta need to be implemented soon. Some herds have declined by more than 70 per cent during the past 15 years.

"It is not immediately apparent how, given the foregoing facts, the Minister reasonably could have concluded that there are no imminent threats to the national recovery of boreal caribou," Justice Crampton wrote in his decision.

"The reason that the *Species at Risk Act* isn't working is because the federal government continually refuses to let it work," said Gorrie. "The Minister's unreasonable decision is another example of the government's refusal to apply SARA for the purpose it is intended – to protect species at risk."

Abundant scientific evidence indicates that oilsands operations contribute to caribou population declines, yet as of July 2010, there were 34 current or approved oilsands projects and 12 additional proposed projects within the herds' ranges.

"We will lose our northeastern Alberta caribou herds if no concrete steps to protect these animals are





taken soon,” said Simon Dyer, policy director for the Pembina Institute.

A 2010 Alberta government study found that if the current industrial development trend continued, local caribou are likely to become extinct in less than 40 years.

The Government of Alberta’s reluctance to introduce any meaningful caribou habitat protection through its recent Lower Athabasca Regional Plan makes immediate federal action even more critical.

“Justice Crampton essentially said that the Minister’s decision flies in the face of all the evidence before him,” said Cliff Wallis, Alberta Wilderness Association vice-president. “Minister Kent and the Alberta government must stop their delaying tactics and get on with the pressing work of on-the-ground caribou habitat protection.”

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Protecting Alberta's caribou

What

Ecojustice, on behalf of the Pembina Institute and Alberta Wilderness Association, is asking the Federal Court to compel Environment Minister Peter Kent to recommend an emergency order protecting threatened woodland caribou (*Rangifer tarandus caribou*) in northeastern Alberta.

Status

- In dramatic decline, several herds at immediate risk of extirpation (local extinction)
- Listed as “threatened” under *Alberta’s Wildlife Act*
- Listed as “threatened” under the federal *Species at Risk Act*
- In recognition of the dramatic declines that are occurring, the Alberta government’s Endangered Species Scientific Sub-committee recently recommended that Alberta caribou be uplisted from “threatened” to “endangered”

Features

- Extremely sensitive animals intolerant to habitat disturbances
- Require large, continuous tracts of old-growth conifer forests and peatlands to survive
- At risk from industrial development that destroys habitat caribou need to survive
- More vulnerable than most large mammals to habitat changes due in part to low reproductive rate.

Main threats to caribou survival

- Habitat disturbance and loss due to oilsands and forestry development
- Wolf predation as result of human-induced change to landscape



Suncor's Millenium Oilsands Project and Alberta's northeastern boreal forest.
Credit - David Dodge (The Canadian Parks and Wilderness Society)

“ The level of habitat disturbance is above 45 per cent for 12 of the 13 local populations [in Alberta]. This level of disturbance is beyond the biologically acceptable threshold for self-sustaining local populations as evidenced by the continued decline of most boreal caribou local population in the province.

– Memorandum to federal Minister of Environment

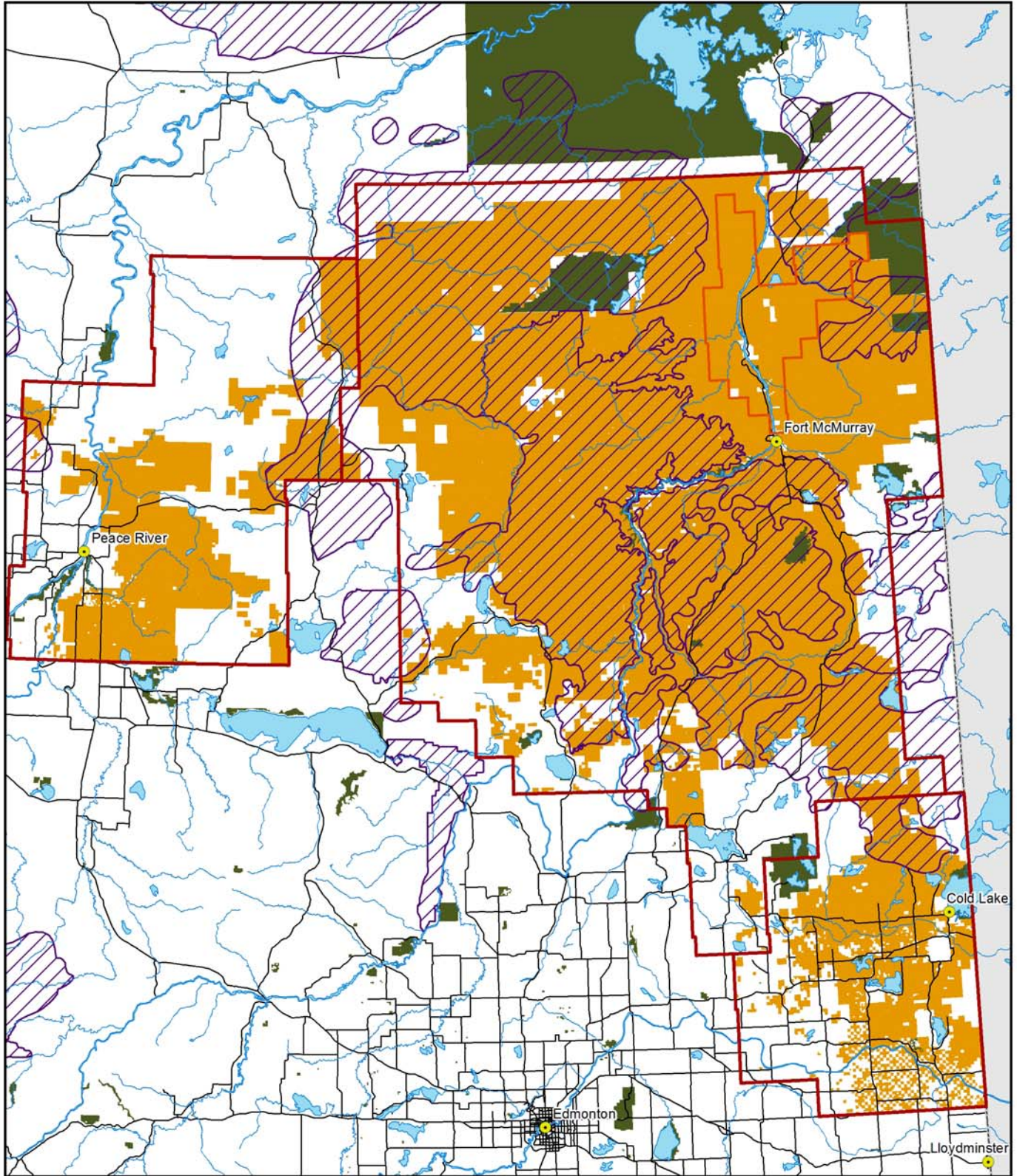


More caribou facts

- The ranges of the northeastern herds are not adequate to support their survival
- Five out of the seven herds found in northeastern Alberta are estimated to have less than a 10 per cent chance of surviving longer than 100 years, based on their current trajectories (not factoring in additional disturbances from future industry development)
- As of July 2010, there were 34 current or approved oilsands projects, and 12 proposed projects within the herds' ranges (Memorandum to federal Minister of Environment)
 - More than 46,000 km² has been leased for oilsands development (see map)
- If current industrial development trend continues, the herds are likely to be extirpated in less than 40 years (2010 status report from Government of Alberta)
- The federal Minister of Environment concedes that:
 - All 13 local populations of boreal caribou in Alberta are at an elevated risk of extirpation given current levels of habitat disturbance and population conditions.
 - Restoring caribou habitat will take a considerable time since their habitat consists of old-growth forests that are 80+ years old
 - Loss of Alberta herds would negatively impact survival of remaining caribou in Canada
 - The Alberta government has failed to manage effects of industrial development in northeastern Alberta on caribou and their habitat
- Virtually none of the new protected spaces designated in Alberta's draft resource development guide – the Lower Athabasca Regional Plan – include critical habitat for caribou survival and recovery

Overlap between oilsands leases and caribou range

*courtesy of Global Forest Watch



-  Caribou Herd Range
-  Oil Sands Leases (Jan 2011)
-  Surface Mineable
-  Oil Sands Admin Area
-  Existing protected areas

