

Basic whale facts:

- Killer whales, also known as orcas, are top predators in the marine food web and considered a “sentinel species,” meaning their health is an overall indicator of the marine environment’s ecological health.
- This lawsuit is about two populations of resident killer whales found off of B.C. coastline, the **northern residents**, which number around 220, and the **southern residents**, which number in the mid-80s.

The *Species at Risk Act* (SARA):

- SARA’s mandate is to protect vulnerable species and ensure the recovery of such species back to healthy population levels.
- The act lists the Southern residents as an endangered species and the northern residents as a threatened species.
- According to SARA, the government (in this case, the Department of Fisheries and Oceans - DFO) must legally protect identified **critical habitat** of endangered and threatened species from destruction.
- SARA defines critical habitat as the habitat necessary for the survival or recovery of a listed wildlife species, identified in that species’ recovery strategy or in an action plan.
- Southern resident critical habitat includes: waters around the San Juan and Gulf Islands and into Georgia Strait; northern resident critical habitat includes the Johnstone Strait, the south-eastern Queen Charlotte Strait and the channels connecting these straits.

Our lawsuit:

- We argue that DFO has failed to legally protect critical habitat:
 - DFO proposed the use of policies, guidelines and government discretion as adequate means to accomplish legal protection.
 - DFO limited the scope of legal protection to the geophysical, but not the biological, — elements of critical habitat.
 - **DFO’s exclusion of legal protection for biological elements of critical habitat, such as water quality and availability of prey, was an unlawful interpretation of federal law and breaches the terms of the *Species at Risk Act*.**

Threats to killer whales:

- Declining salmon stocks
 - Whales need to eat, and they rely on large, fatty Chinook salmon once abundant in B.C.’s coastal waters.
 - Poor Chinook returns translate into increased whale mortality, for example, population drops in both species in the mid-late 1990s and early 2000s.
- Physical and acoustic disturbance
 - Noise pollution makes it harder for the whales to locate and hunt for fish.
 - Dredging, drilling, construction, seismic surveys, and military sonar impact the acoustic environment. There is growing evidence that underwater noise can disrupt whale behaviours, cause physical injury and render habitat unsuitable for marine mammals.
- Toxic contamination
 - Whales are vulnerable to the accumulation of high levels of persistent organic pollutants (POPs) because they are long-lived animals that feed high in the food

chain (that is they eat prey that have also accumulated these pollutants in their systems).

- Recent study indicates Chinook salmon, the whales' principle food source, are contaminated with PCBs, flame retardants and other persistent chemicals retained in body fat.
- Because of their small population sizes B.C.'s whales are particularly vulnerable to catastrophic events, such as oil spills.
 - Heightened concern because of potential increased oil tanker traffic along coastline.
 - Whales do not appear to avoid oil spills and can easily fall victim to the inhalation of petroleum vapours.
 - Exposure leads to dramatic population declines and poor fertility (ex. Alaskan killer whales in aftermath of Exxon Valdex spill).

To survive, the whales need:

- Protection of Chinook stocks in the whales' critical habitat.
 - Salmon allocation for whale must be part of the fisheries management process.
- A marine environment legally protected from excessive noise pollution.
 - Ambient quality of the marine environment must be monitored and understood.
- Better protection from pollution.
 - Critical habitat must be protected by stronger laws that help lower the already significant load of chemical pollutants found in the whales' critical habitat.
 - Critical habitat must from the threat of a catastrophic pollution event such as an oil spill. This is especially critical given that oil tanker traffic along B.C.'s coastline may increase in coming years.
- **DFO must deliver the terms of the whales' recovery strategy, finalized in March 2008.**
 - Should consult with expert recovery team of government and independent scientists already assembled to assist in the recovery of this iconic animal.