

The Miami Herald

MiamiHerald.com



MONDAY, NOV. 24, 2008
FINAL EDITION

ENVIRONMENT

There ought to be a law to protect animals

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On Nov. 12, the Supreme Court ruled in favor of the Navy's right to use sonar that can be fatal to dolphins, whales and other marine mammals.

The case was a challenge to the use of high-intensity sonar in the Navy's submarine detection training exercises. The Natural Resources Defense Council (NRDC) and its co-plaintiffs claimed that the exercises harmed marine



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mammals by causing bleeding, lesions and disorientation. A lower court agreed and imposed six restrictions on the exercises.

This Supreme Court case was an appeal of two of those restrictions: shutting down the sonar when a marine mammal was spotted, and powering down under other circumstances near the surface. Using the laws and legal doctrines at hand, Chief Justice John Roberts easily dismissed the interests of the whales and dolphins and over-

turned those restrictions. He said he must defer to the Navy's judgment that the restrictions would compromise its ability to defend national security.

The setback could have been worse, since the Navy challenged only two of the six restrictions. But it showed that the Supreme Court is less disposed to protecting nature than the lower courts. And more important, the case exposed some fundamental difficulties in protecting nature in the face of a court with that predisposition.

The overriding lesson of *Winter v. NRDC* is that our legal system is ill-equipped to protect the natural world. This may already be evident since we are beset with global warming and mass extinctions. But the case exposes some practical ways our laws need improvement. The problems center around the way courts define the "public interest" to apply only to "human" interests. Our system does not recognize that the Earth is a web of interrelated, interdependent beings, and natural systems need to function together so all species can flourish. In this case, laws failed nature in three ways.

• **First**, in our legal system, animals do not have standing in court. NRDC could not argue on behalf of the marine creatures themselves. It could argue only that NRDC itself would be harmed if the sea creatures could not be watched or photographed. This affected the outcome in favor of the Navy. We need to change our laws so that life other than human life can be represented legally.

• **Second**, our environmental laws themselves are weak. Marine mammal and coastal zone protection laws have exemptions for military maneuvers so when it goes back to the lower courts, much of the case relies on the National Environmental Policy Act. NEPA requires agencies only to assess environmental impacts before taking actions. So even if the NEPA claim is won, sonar can be used once the studies are performed (even if the studies conclude that the tests are harmful). To protect nature, laws must be strengthened.

• **Finally**, our laws treat this problem as if it is a U.S. problem alone, not one that concerns other countries' relationships to

the environment and marine creatures. It exposes how U.S. domestic laws only weakly enforce the few international environmental agreements in which we participate. To promote environmental protection, the United States must become a stronger international player.

We need to redesign our legal system to recognize that ecological balance rests on the interdependence of all species, humans as well as dolphins. *Winters v. NRDC* involved a preliminary injunction, so the questions will continue to be played out in courts. The administration of President-elect Barack Obama can address this problem when it takes over in January. But the fundamental question about how conflicts between humans and nature are resolved must not depend on politics and appointees to courts; it must be addressed through a new system that values and respects the non-human sphere as well as the human one.

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