

January 30, 2018

Sent via e-mail to min@dfo-mpo.gc.ca and ec.ministre-minister.ec@canada.ca, and via courier

The Honourable Dominic LeBlanc
Minister of Fisheries and Oceans Canada
200 Kent Street
Station 15N100
Ottawa, ON K1A 0E6

The Honourable Catherine McKenna
Minister of Environment and Climate
Change and Minister Responsible for
Parks Canada
200 Sacre-Coeur Boulevard
Gatineau, QC K1A 0H3

Dear Ministers LeBlanc and McKenna:

Re: Petition for an emergency order for the Southern Resident Killer Whales under s. 80 of the *Species at Risk Act*

We are legal counsel for the David Suzuki Foundation, Georgia Strait Alliance, Natural Resources Defense Council, Raincoast Conservation Foundation, and World Wildlife Fund Canada (the “Petitioners”). Further information about each of the Petitioners is set out in the attached Petition.

As public interest groups that are concerned about the survival and recovery of the Southern Resident Killer Whales (the “Southern Residents”), the Petitioners demand that you, as the competent ministers for the Southern Residents under the *Species at Risk Act*, SC 2002, c 29 (“SARA”), take immediate action to recommend an emergency order pursuant to s. 80(2) of SARA to protect the Southern Residents to address imminent threats to their survival and recovery.

The grounds for this demand are set out in the attached Petition. In summary:

- The Southern Residents are an endangered population listed under SARA.
- They are in a decline, experiencing a high number of mortalities and struggling to produce surviving calves. They currently number only 76 individuals.
- The three main threats to the Southern Residents are the lack of availability of their main prey, Chinook salmon; acoustic and physical disturbance from vessels; and environmental contamination. Reduced prey availability and acoustic and physical disturbance are considered the most significant factors in their ongoing decline and the greatest obstacles to recovery. Without intervention, these threats will continue to increase.

- The Southern Resident population cannot grow, or recover, under current conditions, and it will decline if conditions worsen.
- The population therefore faces imminent threats to its survival and recovery, and measures that address the threats to Southern Residents are needed urgently.
- Under s. 80 (2) of SARA, you have a mandatory duty to recommend to the Governor in Council that it make an emergency order to provide for the protection of a species if you are of the opinion that the species faces imminent threats to its survival or recovery.

Appended to the Petition is a letter from Dr. Lance Barrett-Lennard, a leading Southern Resident expert, addressing the rationale for and urgency of actions to address threats to the Southern Residents. He identifies alarming trends in the population and an urgent need for short-term measures, and advises that a precautionary approach is warranted.

The Petitioners have identified immediately actionable measures that should be included in an emergency order, that are designed to increase prey availability and reduce acoustic and physical disturbance. They can be summarized as follows:

- Designate additional areas of protected critical habitat on the west coast of Vancouver Island.
- Ensure prey availability through creation of feeding refuges that are closed to commercial and recreational salmon fishing. As well, restrict Chinook fisheries in the region to enable Chinook salmon populations to recover.
- Prohibit commercial and recreational whale-watching on Southern Resident killer whales in feeding refuges at relevant times of year (May 1 through November 30).
- Outside of feeding refuges, establish and strictly enforce a 200 meter buffer between all vessels and Southern Residents, as well as speed restrictions for commercial and recreational whale-watching vessels.
- Institute a series of operational measures to reduce noise and disturbance from commercial vessels traveling in or near Southern Resident foraging areas. Key actions include speed limits, redirecting ship traffic away from feeding refuges, and making vessels quieter.
- Take steps to limit the cumulative effects of vessel traffic.

While you are the competent ministers, we have also copied this letter and the Petition to the Minister of Transport given the shipping aspect of the Petition, and given that effective solutions to this problem will require the involvement of all of your departments.

In light of the circumstances set out in the Petition, the Petitioners submit that the Southern Residents unquestionably face imminent threats to their survival and recovery, such that you

have a mandatory duty, as set out in s. 80(2) of SARA, to recommend to the Governor in Council that it make an emergency order to provide for the protection of the Southern Residents.

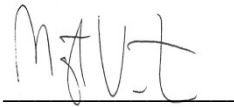
As stated in the Petition, in light of the imminent threats to the survival and recovery of the Southern Residents, and due to the limited time remaining to act within this year's fisheries management cycle, we require a response by March 1, 2018. In the absence of a response, the Petitioners will have to consider whether legal action is necessary to address this urgent situation.

The electronic version of the Petition will be followed immediately by couriered copies that include copies of the documents referenced in the Petition.

Sincerely,



Dyna Tuytel
Barrister & Solicitor



Margot Venton
Barrister & Solicitor

Encl.

- c. David Suzuki Foundation, Georgia Strait Alliance, Natural Resources Defense Council, Raincoast Conservation Foundation, World Wildlife Fund – Canada

The Honourable Marc Garneau, Minister of Transport