

February 15, 2016

Sent via electronic mail to Hunter.Tootoo@Parl.gc.ca

Margot Venton
214-131 Water Street,
Vancouver, BC, V6B 4M3
Tel: 604-685-5618
mventon@ecojustice.ca

Honourable Hunter Tootoo
Minister of Fisheries and Oceans
13th Floor, Station 13E228
200 Kent Street
Ottawa, Ontario
K1A 0E6

Dear Minister Tootoo:

Re: Action plan for endangered Southern Resident Killer Whales

Congratulations on your election to Parliament representing the people of Nunavut, and also on your appointment to the federal cabinet. It is a great honour to be entrusted with the responsibility to oversee the stewardship of Canada's oceans. As you know among your many duties as Minister of Fisheries and Oceans, is the implementation of the federal *Species at Risk Act* (SARA) with respect to marine species.

We write on behalf of David Suzuki Foundation, Dogwood Initiative, Georgia Strait Alliance, Greenpeace, Raincoast Conservation Foundation, Sierra Club BC and Western Canada Wilderness Committee, conservation organizations concerned about the survival and recovery of the endangered southern resident killer whales (the "Southern Residents"). Our clients have worked for years to protect the Southern Residents and their critical habitat. We would welcome the opportunity to sit down with you to discuss action planning for the survival and recovery of this iconic population. Until such a time however, we provide the following summary of the situation facing the whales.

Southern resident killer whales are protected as an endangered species under SARA

The Southern Residents are a small population of fish-eating whales that reside seasonally in the transboundary waters of the Salish Sea. The Southern Residents were identified as an endangered species by COSEWIC in 2001 due to their small population, slow reproductive rate and three key human-caused threats to their survival and recovery: reduced availability of their preferred prey, Chinook salmon; physical and acoustic disturbance; and marine pollution. The whales were automatically listed under Schedule 1 of SARA when the Act came into force.

In 2008 the federal government finalized a Recovery Strategy for Northern and Southern Resident Killer Whales (*Orcinus orca*) in Canada (the “Recovery Strategy”). The Recovery Strategy confirmed the three key threats to Southern Resident survival; identified Southern Resident critical habitat; and threats to that habitat. The Recovery Strategy stated that an Action Plan to address those key threats “will be completed by March 31, 2013.” The Recovery Strategy was subsequently amended in 2011 – no changes were made to section entitled “Target Date for Completion of Action Plans”.

In 2013 our clients were advised that an action planning process was underway within DFO. In March 2014, DFO circulated an unofficial draft Action Plan for the Northern and Southern Resident Killer Whales in Canada. On behalf of our clients we, along with many others, submitted comments on the draft Action Plan. Since that time nothing has happened.

The absence of an action plan is not a good thing for the whales

Within the SARA scheme, recovery strategies and action plans play a key role in ensuring the survival and recovery of species at risk in Canada. The recovery strategy identifies, among other things, what the species needs to survive and recover. The action plan sets out the measures that will be taken to implement the recovery strategy. As stated in the Killer Whale Recovery Strategy “the action plan is necessary to successfully achieve the objectives and approaches of the resident killer whale recovery strategy.”

Action plans also trigger requirements under other legislation to ensure that other projects and proposals do not jeopardize the survival and recovery of listed wildlife species. As you may be aware there are many industrial projects, recently approved, currently under review or being proposed that will impact the Southern Residents and their critical habitat. These include the Kinder Morgan Trans Mountain Pipeline expansion that will increase oil tanker traffic through Southern Resident critical habitat; as well as various terminal expansions to enable coal and LNG exports, and the proposed Terminal 2 expansion at Robert’s Bank. The absence of an Action Plan could result in the approval of projects that maybe very harmful to the whales.

An Action Plan for Southern Resident Killer Whale is long overdue

We understand that the federal government is committed to ensuring “timely completion” of “robust” recovery strategies and action plans. This is excellent news. Given the division of ministerial responsibility under SARA, we trust that as competent Minister you are responsible for carrying out this mandate in relation to marine species. This includes notifying the public, pursuant to section 50(4) of SARA, regarding what is happening with the delayed action plan.

We respectfully request an update on the process to ensure a final Action Plan for Southern Residents is published within a reasonable time, including when we can expect the release of an official Draft Action Plan for public comment.

As stated above we would welcome the opportunity to meet with you to discuss this important issue and to collaborate on a path forward.

Respectfully,

A handwritten signature in black ink, appearing to read 'Margot Venton'.

Margot Venton
Barrister & Solicitor

cc. The Honorable Catherine McKenna, Catherine.McKenna@parl.gc.ca