

To the Honourable Dominic LeBlanc, Minister of Fisheries and Oceans Canada, and the Honourable Catherine McKenna, Minister Responsible for Parks Canada Agency

On behalf of David Suzuki Foundation, Georgia Strait Alliance, Natural Resources Defense Council, Raincoast Conservation Foundation and World Wildlife Fund Canada (the “Petitioners”)

Prepared by Ecojustice

Petition for an Emergency Order for Southern Resident Killer Whales

Executive Summary

The Southern Resident Killer Whales are one of the most deeply revered and critically endangered species in Canada. A series of eleven deaths over the past three years has reduced the population to a mere 76 individuals, living in three pods (J pod-23 whales, K pod-18, and L pod-35). The eleven whales who died between 2014 and 2016 include three calves, four reproductive aged females, two adult males, and two older females. There is alarming evidence that some of these whales died of starvation and that the population as a whole is nutritionally stressed.

The Southern Resident Killer Whale population faces serious threats that are having substantial cumulative and negative effects on their chances of survival and ability to recover. This is unquestionably an emergency. Unless immediate action is taken, there is a high likelihood that the Southern Resident Killer Whales will continue their spiral towards extinction.

The three primary threats to the survival and recovery of the Southern Resident Killer Whales are a shortage of adequate prey (primarily Chinook salmon), noise and physical disturbance, and exposure to toxic substances in the marine environment. Scientists believe that the most urgent threat is the lack of Chinook salmon, but this problem is being exacerbated by noise, physical disturbance, and contaminants. As a result, female Southern Residents are having trouble completing successful pregnancies, few calves are surviving to maturity, and adult whales are malnourished. The situation is critical.

The *Species at Risk Act* was enacted in 2002 to ensure that endangered species in Canada are given every opportunity to recover and flourish. Sixteen years after SARA was passed, there is a recovery strategy and an action plan in place for the Southern Resident Killer Whales. However, these well-meaning documents need to be supplemented with a series of urgent actions—some to be undertaken immediately, and others within the next eighteen months.

The dire plight of the Southern Resident Killer Whales is precisely the type of circumstances for which Parliament created s. 80 of the *Species at Risk Act*, authorizing Cabinet to issue an Emergency Order when a species faces “an imminent

threat to its survival or recovery.” Section 80 empowers the government to take a broad range of actions to protect a species and its habitat, and to prohibit activities that could adversely affect a species or its habitat.

The Emergency Order requested by this Petition must include the following actions in order to address the imminent threats to the survival and recovery of the Southern Resident Killer Whales:

1. Designate additional areas of protected critical habitat on the west coast of Vancouver Island.
2. Ensure prey availability through creation of feeding refuges that are closed to commercial and recreational salmon fishing. As well, restrict Chinook fisheries throughout the region to enable Chinook salmon populations to recover.
3. Prohibit commercial and recreational whale-watching on Southern Resident killer whales in feeding refuges at relevant times of year (May 1 through November 30).
4. Outside of feeding refuges, establish and strictly enforce a 200 metre buffer between all vessels and Southern Residents, as well as speed restrictions for commercial and recreational whale-watching vessels.
5. 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.
6. Take steps to limit the cumulative effects of vessel traffic.

These vital actions are based on the best available science. They are informed by, and consistent with, the Southern Resident Killer Whale Recovery Strategy and the Southern Resident Killer Whale Action Plan published by Fisheries and Oceans Canada. There is no time left for delay—actions must begin immediately.

Therefore the five groups petitioning the Ministers have requested that the recommendation for an Emergency Order under s. 80 of the *Species at Risk Act* be sent to Cabinet no later than Thursday March 1, 2018.

Fisheries Minister Dominic Leblanc has pledged to “do whatever it takes” to protect the Southern Resident Killer Whales from extinction. This Petition is intended to ensure that the Minister’s actions live up to his words.