



Timberwolf Wilderness Society

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Statement

Demand to Comply

05 April 2021

SARA Critical Habitat Orders for Athabasca rainbow trout & bull trout. Timberwolf Wilderness Society (Timberwolf) welcomes the Critical Habitat Orders posted to the Canada Gazette Part II on 31 March 2021, initiating legal protection under the *Species at Risk Act* (SARA) of critical habitat for the endangered Athabasca rainbow trout and the threatened Saskatchewan-Nelson rivers populations of bull trout. Canada's Minister of Fisheries, Oceans and the Coast Guard issued the orders covering critical habitat for these at-risk species occupying waters outside of Canada's national parks.

SARA documents illegally withheld. Timberwolf notes that the Government of Canada illegally withheld these orders for 22 days on this occasion. Previous critical habitat orders have been unlawfully withheld for, e.g., 20 months (threatened westslope cutthroat trout) to as long as nearly nine years in one case (endangered copper redhorse).

The critical habitat orders for Athabasca rainbow trout and bull trout were being illegally withheld after the statutory deadline for their issuance passed on 9 March 2021. Timberwolf, through its counsel, Drew Yewchuk of the University of Calgary Public Interest Law Clinic, filed a demand letter the next day, 10 March, warning of impending legal action from Timberwolf if the orders being withheld were issued later than 15 April 2021. The critical habitat orders for Athabasca rainbow trout and bull trout will protect these two species from several planned coal development and exploration projects, but only provided that the Government of Canada complies with the law.

Pattern of unlawful behaviour. Canada has a persistent habit, amounting to a *de facto* policy, of illegally withholding statutorily required SARA documents, often for years. The documents are only released in response to demand letters threatening legal action, and often only after applications to the Federal Court of Canada are actually filed. Timberwolf was recently successful in forcing the release of many unlawfully withheld SARA documents for numerous species from sticklebacks and cutthroat trout to whales, after filing an application for judicial review in the Federal Court of Canada against the Minister of Fisheries, Oceans, and the Coast Guard. Unless they are being sued, the Government of Canada feels no pressure to comply with the legal requirements of SARA.

More recently, Timberwolf successfully pressured Canada to release a report on its progress in recovering threatened westslope cutthroat trout that was being unlawfully withheld for nearly two years. So far, Timberwolf has had to demand, or actually file for relief in Federal Court, for the Government of Canada to release unlawfully withheld SARA documents such as

1. critical habitat orders for threatened westslope cutthroat trout, threatened bull trout, and endangered Athabasca rainbow trout;
2. a progress report on an action plan for recovering threatened westslope cutthroat trout;
3. an action plan for recovering threatened westslope cutthroat trout;
4. a finalized action plan for recovering threatened westslope cutthroat trout;
5. a five-year report on Canada's progress in recovering threatened westslope cutthroat trout; and
6. final versions of recovery documents for several freshwater fishes and marine species.

This is far from a complete listing of all SARA documents withheld illegally. One of the most egregious is the withholding, contrary to law, of the critical habitat order for copper redhorse for a period of nearly nine years, during which the Port of Montreal planned and got approval for an extension that will destroy critical habitat for this endangered species. The copper redhorse is an endemic found nowhere else in the world but in rare fluvial habitat in the St. Lawrence River and a few of its tributaries in southern Québec.

Demand for the Government of Canada to comply with SARA requirements to release documents. Timberwolf hereby demands that the Government of Canada cease and desist its unlawful practice of withholding documents required by law to be produced and disclosed on the *Species at Risk Act* Public Registry. Canada's persistent illegal behaviour in this respect amounts to an attempt to subvert the will of Parliament as expressed in SARA, and has interfered significantly with SARA's stated goal of recovering listed at-risk species.

Timberwolf intends to draw the attention of the Parliament of Canada's Standing Committee on Environment and Sustainable Development to all such instances of unlawful behaviour it encounters with respect to SARA or other federal environmental legislation. It is Timberwolf's hope that the committee will undertake a thorough investigation of these illegalities.

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