

The Honourable Joyce Murray  
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Ottawa, ON K1A 0A6

The Honourable Stephen Guilbeault  
Environment and Climate Change Canada  
Fontaine Building 12<sup>th</sup> floor  
200 Sacré-Coeur Blvd  
Gatineau, QC, K1A 0H3

May 12, 2022

**RE: Troubling permits under the *Species at Risk Act* and repeated delays in posting permits to the Public Registry**

Dear Ministers,

We are writing to you regarding permits granted under section 73 of the *Species at Risk Act*, SC 2002, c 29 (*SARA*). Section 73 permits are issued to allow an activity or project that will affect a species at risk, any part of its critical habitat, or the residence of its individuals. Our organization has two major concerns regarding section 73 permits. First, that delays in posting descriptions and explanations of section 73 permits to the public registry is defeating the purpose of the public registry; second, that extremely lax interpretations of the requirements for section 73 permits is undermining *SARA*'s protection of the habitat necessary for the survival and recovery of species at risk of extinction.

The Canadian Parks and Wilderness Society Southern Alberta Chapter (CPAWS SAB) is a non-profit conservation organization working to promote thriving, healthy, and diverse lands and waters in Alberta. Our mission is to safeguard, connect, and expand Alberta's parks and wilderness. Since 1967, CPAWS SAB has led conservation efforts to protect areas in Banff National Park, Kananaskis, the Whaleback and the Castle. Our work in existing protected areas focuses on effective management and adherence to legislation and regulations that preserve ecological integrity. Directly related to our mission in preserving Alberta's parks and wilderness is the protection of species at risk.

**The Delay in Posting Permit Explanations**

When a section 73 permit is granted, *SARA* requires the competent minister to include in the public registry an explanation of why it was entered into or issued. Each of your departments has carelessly adopted an approach of posting many of these explanations *after* the permit has been in effect for weeks or months. CPAWS SAB takes the view that the intent of *SARA* was for these explanations to be provided to the public before any permitted activity begins so that interested parties have the opportunity to comment on permits *before* they take effect.

There are three permits which exemplify our concern:

- Under the responsibility of the Parks Canada Agency permit BNP-1497, which affects the Bull Trout and Westslope Cutthroat Trout. This permit started on June 16<sup>th</sup>, 2021 and expires June 16<sup>th</sup>, 2031. This permit was not posted to the registry until on or about March or April 2022.
- Under the responsibility of the Department of Fisheries and Oceans permit 19-HCAA-01862, which affects the Bull Trout. This permit started on August 1<sup>st</sup>, 2021 and expires on August 31<sup>st</sup>, 2021. This permit was not posted to the registry until on or about February 2022.
- Under the responsibility of Environment and Climate Change Canada permit SARA-PNR-2021-0626, which affects Ord's Kangaroo Rat and three other species at risk. The permit was for long-term prescribed burns. This permit started on October 5, 2021 and expires on March 31<sup>st</sup>, 2024. This permit was not posted to the registry until April 2022.

Records released through the *Access to Information Act* show that the general practice at the Department of Fisheries and Oceans is to post batches of section 73 permit explanations every few months – when most of them are weeks or months old and the activity is a *fait accompli*. This practice of giving no notice to the public and to environmental groups who would challenge the permits in court removes the realistic possibility of public or judicial oversight. The failure to post the explanations for section 73 permits on the registry before the permits take effect means that Canadians do not have the opportunity to make any comment regarding work that could harm species at risk until after the work has already begun. It is imperative that the permits are posted to the registry when they are granted, and before the permit comes into effect.

### **Granting Improper Permits**

CPAWS believes that in addition to posting permits to the registry late, the permits being issued do not meet the legislative requirements of sections 73(2) and 73(3) of *SARA*.

Section 73(2) of *SARA* is meant to limit permits to only activities with three types of purposes: (a) scientific research; (b) activities that would benefit the species or enhance its survival in the wild; or (c) if the impact to a species is incidental to the activity. This requirement has been effectively neutralized because your departments have interpreted “incidental” to mean “not the intended purpose of the activity”. Under this peculiar interpretation, any activity other than one aimed directly at harming the species at risk qualifies for a permit.

Section 73(3) sets three pre-conditions the activity must meet before a section 73 permit can be issued. Permits are *only* to be granted if the Minister is of the opinion that:

- (a) all reasonable alternatives to the activity that would reduce the impact on the species have been considered and the best solution has been adopted;
- (b) all feasible measures will be taken to minimize the impact of the activity on the species or its critical habitat or the residences of its individuals; and
- (c) the activity will not jeopardize the survival or recovery of the species.

Consider permit BNP-1497 affecting Healy Creek, critical habitat for the Bull Trout and Westslope Cutthroat Trout. BNP-1497 was granted to expand a parking lot in Banff National Park. The explanation for the permit states:

“increasing the size of the vegetation buffer between the parking lot and aquatic habitat was examined. This option is not considered feasible *without compromising the operations of the parking lot.*”

This permit was issued despite the knowledge that the construction “is likely to contribute to ongoing adverse effects to critical habitat” and will result in localized habitat destruction of approximately 2% of the species critical habitat. Work done under the permit has also been of dubious quality – attached are photos of the ‘berm’ created in order to protect Healy Creek from runoff from the parking lot. We have notified Parks Canada staff of the state of the berm and have been assured that Environmental Inspection Officers will conduct a site visit in the next few days. It is good that Parks Canada will inspect the site and work with Sunshine Ski Hill to improve the quality of the berm, but that does not address the problems with the permitting system that allowed this work to proceed in the first place. Permit BNO-1497 put critical habitat at risk without adequate justification and without a sufficient plan to protect the critical habitat.

Although BNP-1497 provides an explanation as to how the pre-conditions were considered, it does not meet the requirements in 73(3) that require the Minister to only issue permits that where all feasible measures will be taken to minimize the impact of the activity on critical habitat and to ensure permits do not jeopardize the recovery of species at risk. Canada should not be endangering 1/50<sup>th</sup> of the habitat of species at risk for the benefit of larger parking lots.

Other permits have been granted to allow coal mining companies to prepare their baseline assessment to build coal mines that would impact critical habitat, (20-HCAA-00276, 19-HCAA-01189). This is not a sufficient justification to grant a permit, as *SARA* will block the coal mine from being constructed. These permits endanger critical habitat and mislead companies into advancing project proposals with no hope of being approved. Providing clarity to industry about the restrictions *SARA* places on development would benefit all parties involved. The current approach to section 73 permits degrades the importance of critical habitat and fails to protect Canada’s species at risk.

### **The Need for Regulations**

Careless permitting under *SARA* can be addressed in the short term by changing internal policies, and adding a function showing the permit posting date to the public registry but the serious long-term change needed should be done by regulation. Under section 73(10) and 73(11) the responsible Minister may make regulations respecting the issuance of permits that may include provisions respecting time limits for issuing or renewing permits, or for refusing to do so. We urge the two of you, as the responsible Ministers under the *Species at Risk Act* to draft regulations that:

- (a) ensure permits are posted to the public registry at least 30 days before the permit comes into effect (except for permits for emergency work to preserve habitat) so there is transparency in the *SARA* permitting process, and
- (b) sets a clearer and more restrictive standard for ministry staff to apply when considering whether to grant permits to harm species at risk or their critical habitat.

Canada’s species at risk need stronger protection. Canada’s current approach to permitting under section 73 is heavy on paperwork and light on effective protection for species at risk and their habitat. We sincerely appreciate your attention to this issue and consideration of our proposal. CPAWS SAB would prefer to improve Canada’s critical habitat protections in collaboration with

government rather than seeking judicial review. We would welcome the opportunity to discuss these ideas more with your respective ministries. We also offer our participation, if and when it would be helpful in creating a draft of these regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Morrison". The signature is fluid and cursive, with the first name "Katie" being more prominent than the last name "Morrison".

Katie Morrison  
Executive Director  
CPAWS Southern Alberta