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# THE SUQUAMISH TRIBE

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August 23, 2019

Hon. Joceyln Beaudet, Panel Chair  
Dr. David Levy, Panel Member  
Dr. Douw Steyn, Panel Member  
c/o Cindy Parker, RBT2 Panel Manager  
Canadian Environmental Assessment Agency  
160 Elgin Street, 22nd Floor, Ottawa ON K1A 0H3  
CANADA

RE: CLOSING REMARKS – ROBERTS BANK TERMINAL 2 PROJECT

Dear Honorable Panel Chair Beaudet and Members Levy and Steyn:

The Suquamish Tribe (Suquamish) submits its closing remarks for the Roberts Bank Terminal 2 Project (Project). The Suquamish Tribe, a federally recognized Indian Tribe, is a signatory to the 1855 Treaty of Point Elliot with the United States. The Project is within the Suquamish Tribe's adjudicated usual and accustomed fishing grounds and stations (U&A) which extend from the northern tip of Vashon Island through the Puget Sound and Salish Sea to the Fraser River, including Haro and Rosario Straits. *United States v. Washington*, 459 F. Supp. 1020, 1049 (W.D. Wash. 1975). The right to fish within Suquamish's U&A is reserved under the Treaty of Point Elliot.

Since time immemorial the Salish Sea contained no international boundaries between the United States and Canada. The Suquamish Tribe has many close connections to the First Nations of British Columbia including family connections and cultural connections. The Canadian portion of the Salish Sea, regardless of international boundary, is Suquamish's aboriginal territory and Treaty-reserved U&A that has been fished at since time immemorial. It is a place Suquamish shares with other U.S. Tribes with treaty-protected fishing rights and First Nation relatives. It is clear that the shipping lanes to be used for incoming and outgoing vessels originating at Roberts Bank Terminal 2 will cut directly through the heart of Suquamish's (and other U.S. Tribes) U&A treaty-reserved fishing grounds and will cause direct impacts.

Although Suquamish was not originally contacted by the Vancouver Fraser Port Authority (Proponent) or the Canadian Environmental Assessment Agency (CEAA) to engage in government-to-government consultation to address project impacts to Suquamish and its tribal members arising from

the Project, Suquamish actively participated in the public process by submitting written comments to CEAA dated October 5, 2018<sup>1</sup> and February 8, 2019<sup>2</sup> and also testified with other U.S. Tribes at the May 25, 2019 hearing in Delta B.C.<sup>3</sup> It should be noted that the PowerPoint and video presented by Suquamish during the hearing was filed with the CEAA Panel as Hearing Documents but were not listed on CEAA's website. Suquamish's hearing materials are referenced in the hearing transcript. The PowerPoint is therefore, attached to this letter as Exhibit 1. A link to the video shown at the hearing is located at <https://www.youtube.com/watch?v=Y82QudyLElg>.

For purposes of Suquamish's closing remarks, all written comments filed with the CEAA, including exhibits, and the May 25, 2019 hearing testimony with the resubmitted hearing materials (a PowerPoint and a video) used during the hearing, are incorporated in this letter by this reference.

## I. TRANSBOUNDARY EFFECTS

Suquamish and other U.S. Tribes participated in the review of the Project because transboundary effects from the Project will impact Suquamish and other U.S. Tribes' physical, spiritual, and cultural life ways that have been practiced since time immemorial. As noted in our October 5, 2018 comments, Suquamish participated as an intervenor in the Transmountain Pipeline-Kinder Morgan Expansion project review that raised similar transboundary effects as compared to this Project due to vessel traffic, interference with treaty-reserved rights, the potential for oil spill risk, and impacts to the Southern Resident Killer Whales ("Southern Residents," "orca", or "blackfish") and other impacts. Transboundary effects tied to this Project were raised by Suquamish and other U.S. Tribes, but have not been fully evaluated by the Proponent or the CEAA in Information Request packages 1 through 14 or in the Proponent's responses to these Information Request packages. The Panel did acknowledge transboundary effects associated with the Project in a November 2, 2018 letter to Tribal Chairman Forsman:

The Review Panel is aware of the proximity of the Project to the Canada-United States of America (USA) international border and the potential for transboundary effects resulting from the designated Project and increased shipping associated with Project. The Review Panel is mandated to consider environmental effects of the Project, which include a change that may be caused to the environment that would occur outside of Canada per section 5 (1)(b) of *Canadian Environmental Assessment Act, 2012*. The Review Panel has asked a number of questions of the Proponent and government departments and agencies (Information Requests) on topics identified

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<sup>1</sup> Document #1310 (assigned number on CEAA's website <https://ceaa-acee.gc.ca/050/evaluations/proj/80054?culture=en-CA>).

<sup>2</sup> Document #1459: February 8, 2019, written comments filed by Earthjustice on behalf of the Swinomish Indian Tribal Community, Suquamish Tribe, and Tulalip Tribes concerning Roberts Bank Terminal 2 Project, Further Comments on Sufficiency with Exhibits 1 through 23 attached.

<sup>3</sup> Document #1814, May 25, 2019 Hearing Transcript.

by the Suquamish Tribe as areas of concern, including questions on fish and fish habitat, marine mammals, accidents and malfunctions, and access to and availability of resources.<sup>4</sup>

The Panel Manager suggested that Suquamish review Document #934 that provides a compilation of information requested by the Panel as well as the Proponent's responses to date. The review of Documents #934 and #999, Information Request Packages 1 through 14 requested by the Panel and the Proponent's responses to these packages plus all other documents on the CEAA website in preparation for filing these closing remarks, do not mention Suquamish's concerns, the transboundary effects, or impacts to treaty-reserved fishing rights in U.S. waters arising from the Project. Incoming and outgoing vessel transits associated with Roberts Bank Terminal show that vessel traffic will transit through U.S. marine waters that directly overlap with Suquamish's treaty-reserved fishing areas.

The spatial boundaries analyzed in Environmental Impact Statement<sup>5</sup> did not encompass or address impacts to U.S. waters (Strait of Georgia, Boundary Pass, Haro Strait, and the Straits of Juan de Fuca) where inbound and outbound marine vessels associated with the Project overlap in U.S. waters within Suquamish's treaty-reserved fishing areas. Limiting the scope of analysis of the Project, despite the reality that the vessels will travel further than 12-nautical miles after leaving the Terminal and will spend substantial time in U.S. waters, leads to an inadequate analysis of the Project's environmental impacts and arbitrarily restricts any analysis of the full range of impacts the Project will have and is contrary to the *Canadian Environmental Assessment Act*, 2012, SC 2012, c 19 s 52 at s 19, which requires the evaluation of effects "outside of Canada."<sup>6</sup> Because the Marine Shipping Supplemental Report arbitrarily excludes U.S. Tribes, including Suquamish, that exercise legally protected fishing rights in the project area, it incorrectly concludes that marine shipping will only have a "minor incremental adverse impact" on "Aboriginal groups."<sup>7</sup> The recommended mitigation measures—limited to the development of a communication plan with selected First Nations—are inadequate for the same reason. A scope of review that included vessel traffic through the entire Salish Sea and into international waters would allow for review of the full environmental impacts associated with and caused by the proposed Project, including direct, indirect, and cumulative impacts to fisheries, imperiled species like the Southern Residents and Chinook salmon, and to U.S. Tribes cultural, subsistence, commercial and spiritual lifeways. International environmental norms and principles impose obligations on Canada to avoid such transboundary environmental harm.<sup>8</sup>

After Suquamish representatives testified at the May 25, 2019 hearing, review of the CEAA's website and the filings of more recent documents<sup>9</sup> fail to mention Suquamish or its legally protected

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<sup>4</sup> Document # 1336, November 2, 2018 letter from the Review Panel to Leonard Forsman.

<sup>5</sup> Document ##181,271, 314, 316, 345, 386, 388, 391412, 437, 438

<sup>6</sup> CEAA s.5(1)(b)(iii).

<sup>7</sup> Document # 1459 at 20, fn 63.

<sup>8</sup> Document # 1459 at 36 – 54.

<sup>9</sup> See e.g. Documents ## 181, 271, 314, 316, 345, 386, 388, 391-394, 410412, 437, 438, 550, 572, 897, 930, 946, 1000, 1051,

interests, fail to directly address transboundary impacts from the Project in U.S. waters to Suquamish and other U.S. Tribes, and fail to expand the scope of the analysis to encompass U.S. waters where Project vessels will transit contrary to the requirements of section 5 (1)(b) of *Canadian Environmental Assessment Act, 2012*. The environmental assessment is therefore, incomplete and inadequate.

For all of these reasons, Suquamish's closing remarks summarize key issues that were not addressed by the Panel or the Proponent and that remain unresolved today. Nothing proposed by the Proponent as mitigation offsets the project impacts and burdens that will be borne by Suquamish and other U.S. Tribes who are similarly situated.

## II. COMMERCIAL VESSEL TRAFFIC INTERFERES WITH TRIBAL FISHING RIGHTS

Suquamish tribal fishing is a cultural, ceremonial, commercial, and subsistence right.<sup>10</sup> The subsistence and dietary relationship between the Suquamish people and the treaty fishing harvest and consumption is a strong strand of the tribal culture. The 1855 Treaty of Point Elliott predates the establishment of marine shipping lanes and the creation of both Canada and the United States.<sup>11</sup> Tribes historically fished in the areas of the shipping lanes and have a treaty-reserved right to continue to fish in the shipping lanes.<sup>12</sup> Existing inbound and outbound shipping traffic (non-tribal) already cause interference with tribal fishing activities. "The types of interferences with shipping traffic and tribal fishers occur when ship traffic passes through the Tribe's fishing grounds and damages tribal gill nets. This causes net damage and/or net loss and loss of fish, along with creating serious safety and health hazards on the water."<sup>13</sup> Suquamish tribal elder and fishermen David Sigo Sr. testified to his personal experience when he was fishing and a large vessel interfered with his harvest and created a dangerous situation.<sup>14</sup> Large vessel traffic also interfere with Suquamish's participation in canoe journeys and other cultural activities on the water.<sup>15</sup> For Suquamish, it is difficult to express in words, the value of these cultural and subsistence practices and the meaning of the loss due to lack of available fish. There is no mitigation measure that will address this loss. Fishing is central to Suquamish's identity and culture and has been a way of life since time immemorial.

During the May 25<sup>th</sup> hearing, Suquamish Chairman Leonard Forsman provided an illustrative map from an independent report that shows vessel traffic disruption in 2014 to tribal fisheries (Suquamish and other U.S. Tribes) in U.S. waters near and at the Canadian border across all catch

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1078, 1104, 1113, 1116, 1125, 1130, 1134, 1141, 1172, 1179, 1206, 1216, 1254, 1275, 1322, 1328, 1333, 1339, 1345, 1355, 1360, 1361, 1467, 1531, 1547, 1683.

<sup>10</sup> See Document #1459 for a complete discussion.

<sup>11</sup> Document #1459 See U.S. Tribes Final Written Argument at 5-6 (A4X410). See also U.S. Tribes Exhibit 2 – Declaration of Rob Purser, Jr. at ¶ 12 (Treaty of Point Elliot predates the establishment of international shipping lanes) (A6464-3).

<sup>12</sup> Document #1459, Exhibit 11, Declaration of Rob Purser, Jr. at ¶12.

<sup>13</sup> Document #1459, Exhibit 2 at ¶15

<sup>14</sup> Document #1814 at 2566-2567.

<sup>15</sup> *Id.* at 2571 – 2573 (Hearing testimony of Nigel Lawrence, Suquamish Tribal Treasurer).

types.<sup>16</sup> The highest disruption areas are co-located with U.S. tribal treaty fishing areas and inbound and outbound vessels from the Roberts Bank Terminal.<sup>17</sup> This interference not only causes economic impact due to reduced harvest and gear damage or loss but directly impacts the Tribe's subsistence/cultural/spiritual practices that have existed since time immemorial due limiting to preventing access to fishery resources for these customs.

Vessels associated with the Project will increase in size to carry more containers (1,310 feet long, 56 feet wide; carry up to 18,000-20,000 containers). The increase in vessel size compounds the impact to tribal fisheries by increasing interference and causing dangerous waves that impact tribal vessels.<sup>18</sup> Although more recently, the Proponent asserts that vessel traffic will not increase because the vessels will be larger, the Proponent has not committed to a "no increase in vessels in the future" nor will it be held to a certain amount of vessels that call at the Terminal once the Project is approved. The Proponent's claim of no planned increase in vessel calls is based on predictions that fail to account for future market forces that would increase the number of vessel calls. Suquamish and other U.S. Tribes will bear the brunt of this increase in vessel traffic without ever having been considered in the process and without remedy to protect their interests. The baseline vessel traffic conditions are currently effecting U.S. Tribes reserved Treaty rights. The Panel chair stated as much when acknowledging, "there will also be continued growth."<sup>19</sup> The burden of economic development and impacts from this Project in U.S. waters, therefore, should not be borne on the backs of U.S tribes and their efforts to preserve cultural life ways that have existed since time immemorial.

### **III. CUMULATIVE IMPACTS OF BASELINE AND OTHER PROJECTS**

The Panel informed the U.S. Tribes that the purpose of the May 25<sup>th</sup> hearing was "to allow the Panel to receive information from interested parties and the general public on the potential environmental effects and cumulative effects resulting from the proponent's proposal to construct" the Project.<sup>20</sup> The Proponent, however, did not document or analyze the existing baseline impacts to U.S. tribal fishing interests, let alone analyze the combined impacts of other planned projects to those interests. This Project, in addition to other proposed projects that currently have or will have transboundary effects on the Salish Sea, will only exacerbate these effects. It is the Proponent's view that there will be no residual effects on Current Use for any Indigenous group with the implementation of the proposed or suggested measures.<sup>21</sup> At the May 25<sup>th</sup> hearing, the Proponent confirmed its position that "no significant adverse cumulative effects are anticipated to valued components."<sup>22</sup>

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<sup>16</sup> See attached PowerPoint at 8; Document #1814 at 2556-2557; 2586 - 2590.

<sup>17</sup> Compare pages 3 and 8 of the attached PowerPoint.

<sup>18</sup> Document #1814, see testimony of U.S. tribal fisherman at 2495-2499; 2522-2523; 2529-2530; 2543-2547, 2561, 2577 - 2579, and 2591.

<sup>19</sup> *Id.* at 2437.

<sup>20</sup> *Id.* at 2409-2410, 2521.

<sup>21</sup> Document #1459 at 18.

<sup>22</sup> Document #1814 at 2421.

There are several projects proposed on both sides of the border that will have impacts on the Salish Sea. The increase in vessel traffic through the Salish Sea that is a direct result from the Project will not occur in a vacuum. Several First Nations have raised similar concerns, as the Proponent has acknowledged, “Indigenous groups have said that any additional effects on their Current Use, whether as a result of the Project and/or marine shipping associated with the Project, would further degrade already unacceptable conditions.”<sup>23</sup> This Project, coupled with increased vessel traffic and increased risk of oil spills will threaten the U.S. Tribes’ way of life. For instance, the cumulative effect of Transmountain Pipeline expansion on the U.S. Tribes has been ignored, which will result in an estimated 900 additional vessel transits per year (incoming and outgoing) within the Tribe’s treaty-reserve fishing grounds. This is a staggering increase of vessel traffic in U.S. waters. The Andeavor (formerly Tesoro) Xylene Project would also bring additional petroleum chemical tankers into the same shipping lanes.<sup>24</sup> All of these projects would share the same waterways as the Project and will also have an impact on Tribal U&A’s: “The cumulative effects felt by [U.S. Tribes] from all of these projects will be staggering.”<sup>25</sup>

Suquamish and other U.S. Tribes urge the Panel to deny the Project and require the Proponent to perform a cumulative impact study to fully evaluate the impacts to Suquamish and other U.S. Tribes and the environment arising from the transboundary effects of this Project.<sup>26</sup>

#### **IV. INCREASE RISK OF OIL SPILLS WILL DEVASTATE TRIBAL CULTURE AND RESOURCES**

At the May 25<sup>th</sup> hearing, Chairman Leonard Forsman provided an illustrative map from an independent report that shows modeled fishing collision risk with tanker traffic per year based on the period of 2006 to 2014.<sup>27</sup> Again, the highest risk areas are co-located with U.S. tribal treaty fishing areas and inbound and outbound vessels from the Terminal.<sup>28</sup> Even though these vessels will be transporting containers, the vessels will transport approximately 3.6 million gallons of heavy fuel and 440,000 gallons of diesel fuel through the Salish Sea. Suquamish has first-hand experience with the immediate, devastating and lingering effects of an oil spill as was described in the May 25<sup>th</sup> hearing and illustrations provided in the attached PowerPoint.<sup>29</sup>

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<sup>23</sup> Document #1459 at 15-16.

<sup>24</sup> Document #1459 at 16, *See* Andeavor, Anacortes Upgrades Environmental Impact Statement, *available at* <http://anacortesupgradeproject.com/eis> (last accessed Jan. 20, 2019); *see also* Anacortes Upgrades FAQ, <http://anacortesupgradeproject.com/faq> (last accessed Jan. 20, 2019) (“[A]t this time, we estimate between one to five additional ships per month.”).

<sup>25</sup> Document #1459, U.S. Tribes Exhibit 11 – Declaration of Brian Cladoosby at ¶ 8 (A96464-12).

<sup>26</sup> Document #1814 at 2441-2442, 2450, 2462, 2521; Document #1459 at 15-18.

<sup>27</sup> *See* attached PowerPoint at 9; Document #1814 at 2557; 2586 - 2590.

<sup>28</sup> Compare pages 7 and 8 of the attached PowerPoint.

<sup>29</sup> Document #1814 at 2557 – 2559.

Suquamish and other U.S. Tribes have extensively testified that the Salish Sea is currently experiencing the detrimental effects of seemingly “small” impacts, such as small oil spills and increased bunkering.<sup>30</sup> “The international border provides no protection from the risk of oil spill and devastation to the Tribe’s fishing grounds and treaty reserved resources.”<sup>31</sup>

The use of valid assumptions, modeling efforts, and advanced technologies will never completely prevent oil spills. An increase in vessel traffic in the Salish Sea can only result in a higher likelihood that an oil spill(s) will occur in the Salish Sea that is the home of irreplaceable natural and cultural resources. The Salish Sea may not be as pristine as it was at treaty time, but it will only take one mistake, like the Exxon Valdez, to incapacitate the Salish Sea. Such a spill would devastate indigenous communities on both sides of the border and irreparably harm their way of life, including access to treaty-reserved resources and the exercise of treaty-reserved rights, for decades to come. This Project increases that risk.

#### **V. THE PROJECT WILL IMPACT THE DECLINING SOUTHERN RESIDENT KILLER WHALE POPULATION THAT IS INEXTRICABLY LINKED TO SUQUAMISH’S AND OTHER U.S. TRIBES’ CULTURAL IDENTITY**

Suquamish and other U.S. Tribes are also concerned about the impacts that increased vessel traffic and associated noise will have on Southern Resident Killer Whales. Vessel traffic through the Southern Residents’ habitat interferes with their ability to communicate and hunt salmon, can hinder their movements, and drives them from habitat.<sup>32</sup> Studies have found that vessel noise interferes with up to 97 percent of killer whale communication calls.<sup>33</sup> Vessel traffic also “may present obstacles to whale passage, causing the whales to swim further and change direction more often, which potentially increases energy expenditure for whales and impacts foraging behavior.”<sup>34</sup>

Despite the fact that the environmental assessment found that the project will further stress the Southern Residents through increased marine traffic and associated underwater noise, and that the project will result in a loss of productivity of adult Chinook salmon,<sup>35</sup> at the May 25<sup>th</sup> hearing the Proponent continues to assert that Project will not result in significant adverse effects to the Southern Residents:

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<sup>30</sup> Document #1459 at 17.

<sup>31</sup> *Id.* at 35.

<sup>32</sup> Document #1459, Washington Department of Ecology Task Force Report at 27-28 (A96445-7). *See also* U.S. Tribes Exhibit 3 – Declaration of Ray Fryberg at ¶¶ 14-15 (A96464-4); U.S. Tribes Exhibit 1 – Declaration of Nigel Lawrence at ¶¶ 15-16 (A96464-2).

<sup>33</sup> Document #1459, U.S. Tribes Exhibit 9 – Veirs, Ship noise extends to frequencies used for echolocation by endangered killer whales (A96464-10).

<sup>34</sup> Document #1459, U.S. Tribes Exhibit 6 – Critical Habitat Designation at 69,063 (A96464-7).

<sup>35</sup> Document#1459 at 19; Document 1814 at 2425.

Due to their endangered status and the current lack of recovery of the population, southern resident killer whales are assumed to already be significantly adversely affected. With mitigation, the project is not anticipated to result in significant adverse effects to marine mammals, including southern resident killer whales. The Project would not limit the survival or population recovery of southern resident killer whales, nor would it adversely affect the features of critical habitat needed for their life functions.

Specific examples of proposed mitigation measures for the project, include construction environmental management plans, including an underwater noise management plan and a marine mammal management plan, as well as awareness and education measures during progress operation, which would including distributing information regarding marine mammals in the Roberts Bank area to marine pilots and tug operators, working within Port Authority jurisdiction.<sup>36</sup>

The Proponent's view is typical of an individual Proponent who isolates its project impacts by ignoring baseline conditions that are currently negatively impacts Southern Residents sustainability and by ignoring the cumulative effects this Project will have on the declining orca population.

Washington State, which hosts the Southern Residents for part of the year, recently assembled a Southern Resident Killer Whale Task Force to identify threats to Southern Residents and create an action plan to aid in recovery.<sup>37</sup> The Washington Orca Task Force report represents a collaborative effort between state stakeholders and tribal entities to aid in orca survival and recovery. Suquamish Chairman Forsman participated on the Task Force as did other U.S. tribal leaders. In November 2018, the Task Force released a report highlighting the urgent need to act to protect the orca population, which is at its lowest number in more than 30 years, and issuing recommendations supporting orca survival and recovery.<sup>38</sup> The report identified key threats to orca survival including lack of prey, vessel traffic and resulting noise, pollutants in the marine environment, and climate change. To address these threats, the Task Force issued recommendations to increase chinook abundance, decrease disturbance of and risk to orcas from vessels and related noise, and reduce contaminant exposure.

The report, which is supported by scientific research and studies, reaffirmed NMFS's findings in its decision to list the Southern Residents as endangered under the Endangered Species Act. It also confirmed the U.S. Tribes' longstanding concerns that vessel traffic in the Salish Sea is having multiple, significant adverse effects on Southern Residents. Ships and vessels produce noise that interferes with

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<sup>36</sup> Document 1814 at 2423-2424.

<sup>37</sup> Document #1459, Washington State Department of Ecology Exhibit 3 – Executive Order 18-02 (A96445-5).

<sup>38</sup> Document #1459, Washington State Department of Ecology Exhibit 5 – Southern Resident Killer Whale Task Force Report and Recommendations (A96445-7).

orca communication and echolocation.<sup>39</sup> Even if the vessels were “quiet,” the presence of vessels alone can also trigger avoidance behaviors and a stress response among orcas.<sup>40</sup> The report also found that the number of vessels traversing the Salish Sea posed a risk to the Southern Residents by increasing the risk of an oil spill, which would decimate the Southern Resident population.<sup>41</sup> The harm caused by vessel noise is so severe that the Task Force report concludes that “reducing human-created noise and disturbance from vessels – accompanied with a moderate increase in prey availability – should jointly hasten the recovery of Southern Residents.”<sup>42</sup> Not only would reducing vessel noise have a considerable benefit to the Southern Residents, it is also possible to achieve relatively quickly, and the benefits can be immediate.<sup>43</sup> All of these threats are existing and will only be worsened by the proposed Project.

A similar Canadian project that would increase vessel traffic, the Trans Mountain Expansion Project, conceded that it would have significant and unmitigatable impacts on orcas, describing the impacts as “negative, long-term, high magnitude, high probability and significant.”<sup>44</sup> The impacts from these projects due to increased vessel traffic and the increased risk of oil spill have to be analyzed together in order to evaluate the potential risk and cumulative effects these projects have on the Southern Residents. The Southern Residents do not experience modest increases in vessel traffic but instead experience incessant vessel traffic, which this project and the others are compounding. Approving the Project is in direct contradiction of the Washington State Task Force report’s findings and recommendations with respect to reducing noise from vessel traffic. Suquamish and other U.S. Tribes have long acknowledged the relationship between a healthy Salish Sea and the Southern Resident population.

As provided in written comments and in testimony and video shared at the May 25<sup>th</sup> hearing,<sup>45</sup> Suquamish has demonstrated that Southern Residents are an iconic species and are at the heart of Suquamish’s and other U.S. Tribes’ spiritual and cultural identities. Suquamish Chairman Forsman and Suquamish Secretary Nigel Lawrence testified to the strong spiritual relationships by sharing specific stories of direct experiences with Southern Residents. For example, when Suquamish tribal artifacts were being returned to the Tribe from a museum in Seattle, a pod of Southern Residents surrounded the ferry the artifacts were being transported on, and escorted the artifacts across Puget Sound—home to Suquamish. Southern Residents are a visible, vibrant, and integral part of a healthy Salish Sea. They are equally integral to the culture and spiritual practices of Suquamish and other U.S. Tribes who have shared these waters with the Southern Residents since time immemorial. The U.S. Tribes have

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<sup>39</sup> *Id.* at 27.

<sup>40</sup> *Id.* at 28.

<sup>41</sup> *Id.* at 29.

<sup>42</sup> Document #1459, Washington Department of Ecology Task Force Report at 28 (A96445-7).

<sup>43</sup> *Id.* at 28.

<sup>44</sup> *Id.* at 30-31.

<sup>45</sup> *Id.* at 11-13; Document #1814 at 2570, 2579-2585.

collectively embarked on numerous efforts to aid in the survival and recovery of their blackfish relatives. As Suquamish Secretary Lawrence stated during the hearing:

Long after you guys have moved to a different company, long after this company has changed, long after you move to a different part of the world or retired from whatever you're doing, we'll still be here. Our children will still be here and, hopefully, hundreds of generations after will still be here.

And that's our relationship to this land, to this water, to the orcas, to the killer whales, to the eelgrass, to the crab, to all of these species here. And that's what we're trying to defend.

We're not just -- we've said, you know, conserve and save. It really feels like we are here defending. We're here, you know, in our armor sometimes, it feels like, to defend the orca, to defend the salmon. There's an article that, you know, we didn't have -- it just came out. Seattle Times came out with an article, "Hostile waters, orcas, noise". It just came out. It wasn't in time for our packets, but when you get a chance, go online and search for Seattle Times. And I have the link. I could send it to you if you want, [Projects.seattletimes.com/2019/hostile-waters-orcas-noise](https://projects.seattletimes.com/2019/hostile-waters-orcas-noise). And it talks about the impact on noise of these container ships. And it mentions the Port of Vancouver in that article.<sup>46</sup>

"The health of the whales tells us whether the rest of the Salish Sea is healthy. What happens to them happens to us."<sup>47</sup>

## **VI. TRADITIONAL TRIBAL KNOWLEDGE IS SCIENTIFIC KNOWLEDGE**

At the May 25<sup>th</sup> hearing, the Panel raised the same question to each U.S. Tribe, "How do we incorporate your traditional knowledge with scientific knowledge."<sup>48</sup> The Tribes collectively answered that traditional knowledge is parallel with scientific knowledge. At the May 35<sup>th</sup> hearing, Suquamish Tribal Secretary Lawrence answered the Panel's question:

I wanted to agree with Robin Sigo, Treasurer Sigo, our traditional knowledge is scientific knowledge.

There have been studies demonstrating how accurate our traditional stories are when compared to geological data, especially about floods. We have stories about the great flood, songs about the great flood you hear today. And we can tell you how long ago and how deep and that measures

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<sup>46</sup> Document #1814 at 2573 – 2574.

<sup>47</sup> Document #1459 at 13.

<sup>48</sup> Document #1814.

up back – when we’ve worked with geologists, they’ve shown that that was accurate even though it was generations later.

You can’t have a society without using trial and error, without using the scientific method. You can’t survive for long without knowing how to conserve species around you, how to interact with the environment, how to build longhouses, how to build canoes, how to be a seafaring society, how to hunt whales like our neighbors do without trial and error. We use science to learn about the interdependence of species and how we can prevent overharvest. In days gone by we used science to preserve and conserve wildlife. We’ve been telling you this for generations.

The Suquamish Tribe employs dozen of scientists pushing back in the interest of sustainability and conserving the environment. We study everything we do before we cut a regulation to open a fishery. Tribes have chosen not to fish sometimes some years in efforts to conserve fish based on data, based on the science. Salmon, orca, herring, halibut, crab et cetera, all of those species are endangered species [and] are the canaries in the coal mine. We should be paying attention to their health because it is a measurement of the planet’s health and, ultimately, our health.

At a bare minimum, even if we don’t care about animals or the environment, we at least have to acknowledge that we as humans make our livelihood from this planet. Corporate profits are at risk if there is no wildlife.<sup>49</sup>

Indian people understand natural processes because they have observed them closely since time immemorial and passed this information to each generation through traditional knowledge. They adapted their behavior to those processes, intervening in the behavior of plants and animals and adapting to live sustainably with the environment while preserving continuity of community. In contemporary times, these natural processes are out of balance as evidenced by declining salmon stocks, the declining population of the Southern Residents that are on the brink of extinction, lack of critical habitat, pollution and global warming. The Salish Sea has passed the tipping point and the U.S. Tribes and First Nations collectively continue to sound the alarm bell. It is important for the Panel to recognize the value of traditional knowledge in contemporary times and to provide meaningful government-to-government consultation with U.S. Tribes to gain access to that knowledge. The Proponent has not consulted or engaged with Suquamish and other U.S. Tribes and has largely ignored transboundary effects and traditional knowledge of Suquamish and U.S. Tribes as it relates to U.S. waters that will be impacted by the Project.

## **VII. CLIMATE CHANGE**

The Tribe and other U.S. Tribes raised the issue of climate change as it relates to this Project’s impacts to Southern Residents and the failure to address customary international laws.<sup>50</sup> In addition, at

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<sup>49</sup> Document #1814 at 2574 – 2576.

the May 25, 2019 hearing, Suquamish Secretary Lawrence raised climate change as a contemporary cumulative effect problem, including this Project that needs to be addressed:

The chart we saw earlier with the incline of the container ships over the years, how similar is that to the arrow going up about the shrinking of the polar ice caps, the glaciers shrinking, the Extinction of species. I bet you it's that same angle, that same steep curve. Science says that we can't continue to grow at that same rate, increase our shipping rate to that same level. The arrow cannot keep going up without catastrophic results, including extinction of sentient beings like killer whales, like salmon and eventually, humans, us.<sup>51</sup>

Chairman Forsman reminded the Panel that "climate change is an issue. . . And we're finding more and more of our ancestors' graves are eroding away. And I think it's a combination of both the impact of vessel traffic and also rising sea level. . . . we are trying to keep our way of life, and this is an important part of that."<sup>52</sup> Further, he testified:

And having a healthy, sound Salish Sea is so vital to that mental health and pride of our people. And having salmon and shrimp and crab and all those fresh foods, as you know are so delicious. They're so important to feeding our spirit and supporting our ceremonies.

And not only ceremonies, sometimes funerals. But they're also – when we host the tribes who come to Suquamish for the canoe journey, we like to have all the traditional food available for people, we hear about it, so it's very important for our elders to pass on to us that do that. And the fishermen go out for free and harvest those foods for those purposes.

And I think we have to weigh the importance of this project with its impacts. . . . I just think that we need to start thinking more long term instead of long-term profits and investment and returns and more on our most valuable assets, which is our environment, our habitat, our waters that have sustained us for so long.

So I'd like to say that clean water is good for the economy, too, and it creates a lot of jobs as well.

. . . I was thinking about [how] we have a concept of no net loss so when a project comes in, we try to restore something in exchange, and I'd like to see us have a net gain. And if that could happen – I don't think this project is one that can create a net gain. It'll probably create a net

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<sup>50</sup> Document #1459 at 25, 37-40.

<sup>51</sup> *Id.* at 2577.

<sup>52</sup> *Id.* at 2591.

loss. But we need to start pushing in the other direction because we are really tiring of having to mitigate for these in water projects as we have to do in many places.<sup>53</sup>

In closing, Suquamish appreciates the opportunity to file Closing Remarks. In summary, the Proponent has not fully evaluated direct and indirect Project impacts to Suquamish and other U.S. Tribes and the transboundary effects associated with those impacts. Furthermore, mitigation measures offered by the Proponent are inadequate to address these direct and indirect impacts to Suquamish and other U.S. Tribes. This Project has failed to fully analyze the cumulative impacts this project will have on the Salish Sea not only to tribal communities on both sides of the border including to fishery resources and fishing practices, but the increased risk from oil spills due to increased vessel traffic, impacts to marine mammals, impacts to the Southern Residents from increased ship noise and transits, risk to fishery resources, and impacts to climate change. For all the reasons stated above, Suquamish urges the Panel to deny this Project approval.

Sincerely,

<Original signed by>

Melody Allen, Attorney  
Suquamish Tribe

cc: Leonard Forsman, Chairman  
Robin Sigo, Treasure  
Nigel Lawrence, Secretary

Attachment: May 25, 2019 PowerPoint presented by Chairman Forsman.

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<sup>53</sup> Document #1814 at 2591 – 2593.



# Suquamish Tribe

## United States



Chairman Leonard Forsman

# Suquamish Tribe

- šuq<sup>w</sup>abš

- People of the clear salt water

- dx<sup>w</sup>səq<sup>w</sup>əb

- Place of the clear salt water
- Port Madison Indian Reservation

- Marine Travelers of the Salish Sea

- Documented presence harvesting natural resources in North & South Salish Sea, Fraser River and areas west of the Fraser, since time immemorial.

- 1855 Point Elliot Treaty



# Suquamish Tribe

**Monday, Oct. 8, 1827**

*“ . . . In the afternoon arrived the Eldest Son of the old Soquam chief with a slender retinue, for the purpose of trade. It would seem that he is under the protection of the Cowitchens, for Shashia has sent his eldest Boy along with him.”*

**Tuesday, Oct. 9, 1827**

*“The Soquams traded upwards of twenty Beaver Skins, and then took their departure. . . .”*

- The Fort Langley Journals  
1827-30

# Suquamish Tribe



# Suquamish Tribe

- Economics
  - 80 Suquamish Fisherman
  - 160 Clam Diggers
  - Suquamish Seafoods



# Suquamish Tribe

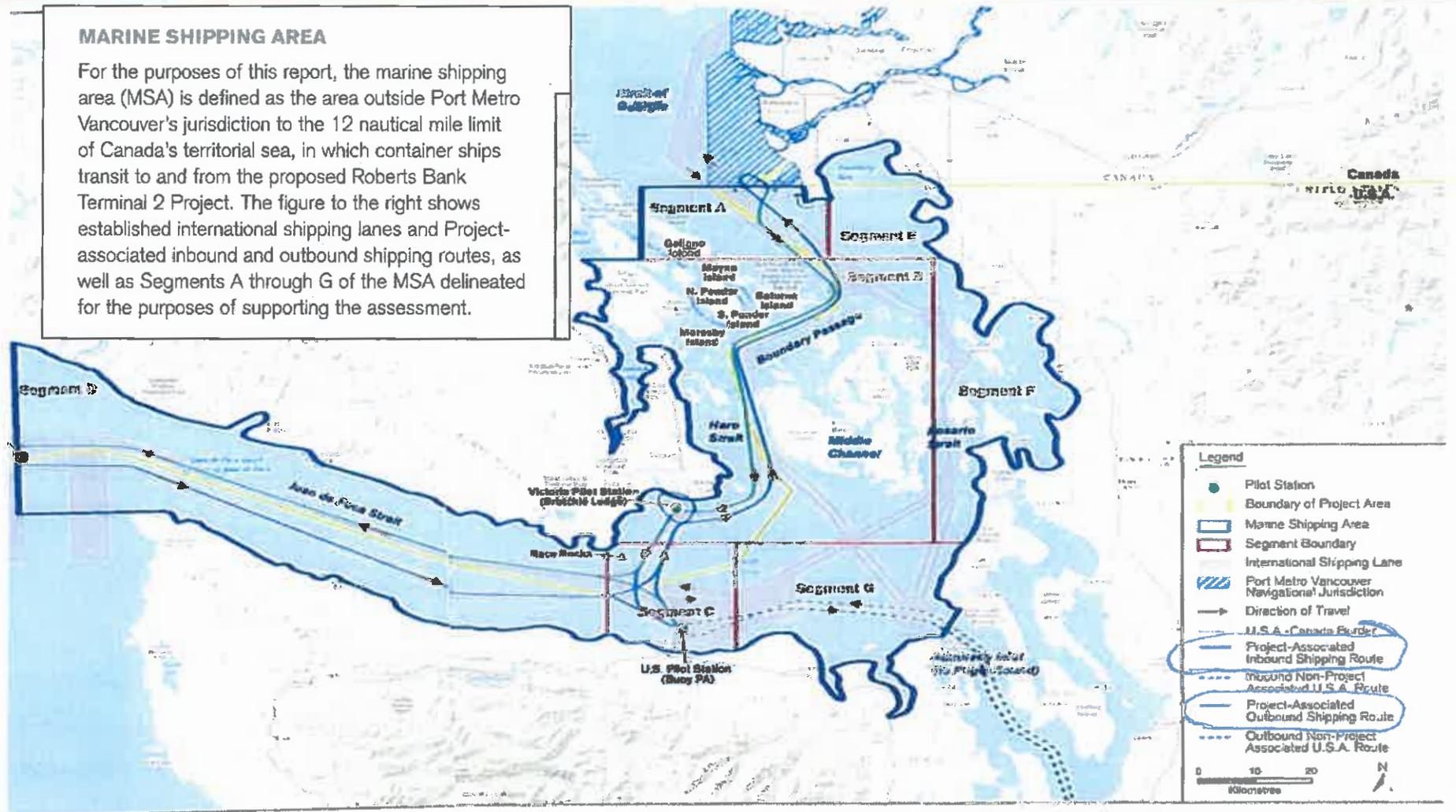
Suquamish Tribe's fishing grounds include:

*“the marine waters of Puget Sound from the northern tip of Vashon Island to the Fraser River including Haro and Rosario Straits, the streams draining into the western side of this portion of Puget Sound and also Hood Canal.”*

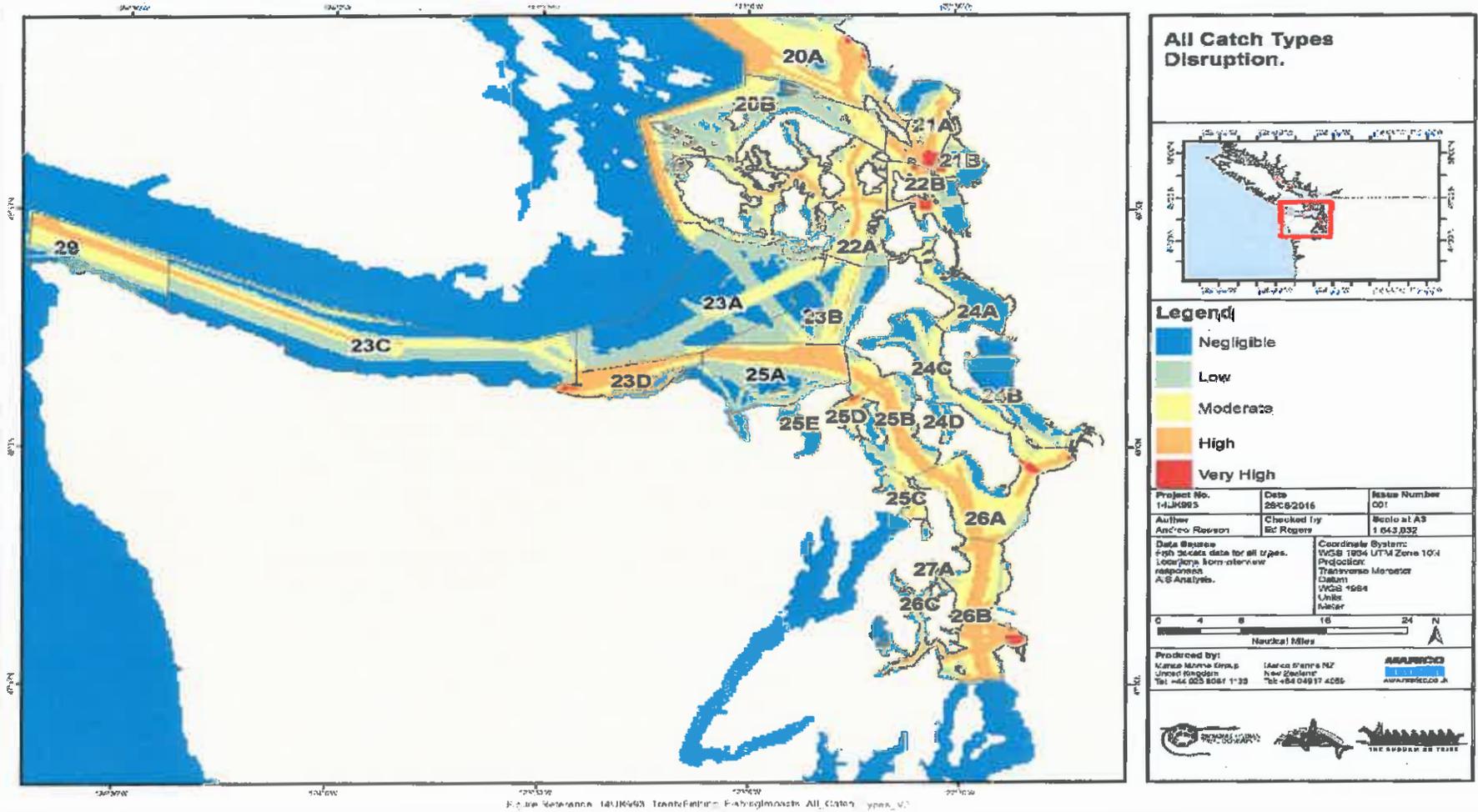
- Judge Boldt, *U.S. v. State of Washington*  
459 F. Supp. 1020, 1049 (1978)

### MARINE SHIPPING AREA

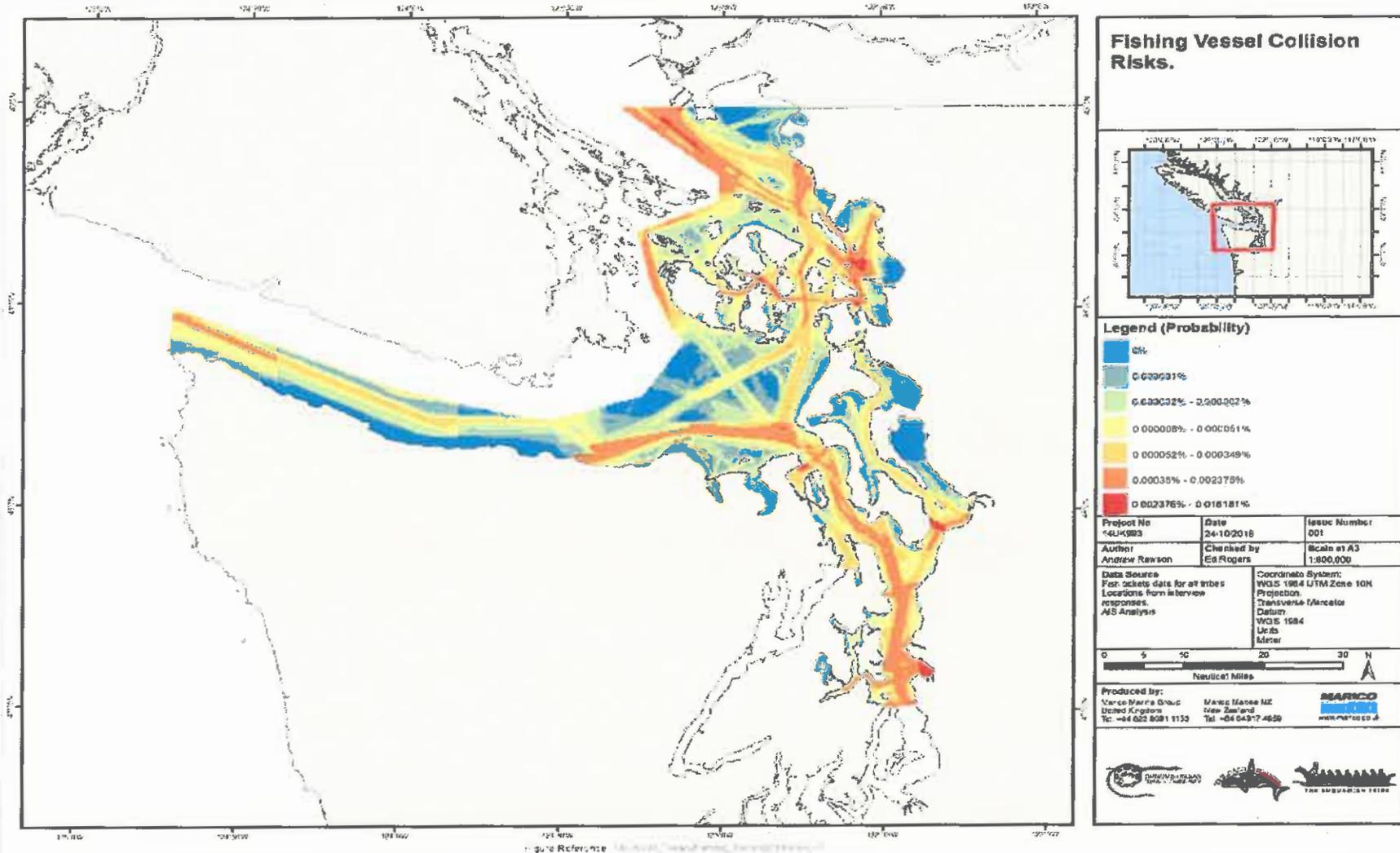
For the purposes of this report, the marine shipping area (MSA) is defined as the area outside Port Metro Vancouver's jurisdiction to the 12 nautical mile limit of Canada's territorial sea, in which container ships transit to and from the proposed Roberts Bank Terminal 2 Project. The figure to the right shows established international shipping lanes and Project-associated inbound and outbound shipping routes, as well as Segments A through G of the MSA delineated for the purposes of supporting the assessment.



# Vessel Traffic Disruption to Fishing Across all Catch Types (2014).



# Modelled Fishing Vessel Collision Risk With Tanker Traffic – per Year



# 2003 Point Wells Oil Spill

