

National Energy
Board



Office national
de l'énergie

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12 October 2018

To: Distribution list

**Trans Mountain Pipeline ULC
Application for the Trans Mountain Expansion Project (Project)
National Energy Board (Board) reconsideration of aspects of its Recommendation
Report (Report) as directed by Order in Council P.C. 2018-1177 (Reconsideration)
MH-052-2018
Requests to Federal Authorities pursuant to paragraph 20(a) of the *Canadian
Environmental Assessment Act, 2012 (CEAA 2012)***

A. Overview

Pursuant to paragraph 20(a) of the CEAA 2012, the purpose of this letter is to request specialist or expert information or knowledge in the possession of each of Fisheries and Oceans Canada (DFO), Environment and Climate Change Canada (ECCC), Transport Canada (TC), Vancouver Fraser Port Authority (VFPA), Pacific Pilotage Authority (PPA), Health Canada (HC), Parks Canada (PC), and Natural Resources Canada (NRCan) [collectively, the Federal Authorities] in relation to the Reconsideration, the background for which is described in the Board's [letter](#) of 26 September 2018.

The Federal Authorities must provide the information or knowledge required by the Board on or before **3:00 pm Pacific time (4:00 pm Mountain time) on 31 October 2018**. By this date, Federal Authorities may also file any other evidence that, in their view, is relevant to the List of Issues for the Reconsideration hearing.

The Federal Authorities have been automatically registered as intervenors in this proceeding, regardless of whether a particular Federal Authority registered for that role or not. This means that they must answer any information requests from the Board or the other Parties about the information or knowledge filed in response to this letter, or any other evidence they may file. For more information on the responsibilities of intervenors, see the Board's Hearing Order MH-052-2018.

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The Federal Authorities can expect additional follow-up questions from the Board throughout the hearing process.

The particulars of the Board’s request are detailed in Parts C and D below.

B. Comment processes and Board decisions

In its letter of 26 September 2018, the Board sought public comments with respect to the Reconsideration hearing, including whether Project-related marine shipping should be part of the “designated project” under the CEAA 2012, and comments on a draft List of Issues.

On 5 October 2018, the Board [sought](#) additional, focused comments from the Parties on the spatial limit of Project-related marine shipping.

In its letter of 12 October 2018, the Board decided, on a principled basis, to include Project-related marine shipping between the Westridge Marine Terminal and the 12-nautical-mile territorial sea limit in the “designated project” to be assessed under the CEAA 2012.

On 12 October 2018, the Board also issued the List of Issues for the Reconsideration hearing, which is attached to Hearing Order MH-052-2018 as Appendix 1.

The Board’s written reasons for the above decisions will follow.

C. Basis for requests

The List of Issues includes issues related to factors described in paragraphs 19(1)(a) through (h) of the CEAA 2012, such as mitigation measures, alternative means, and requirements of any follow-up program, each in relation to Project-related marine shipping. It also includes issues related to section 79 of the *Species at Risk Act* (SARA), such as measures to avoid or lessen adverse effects of Project-related marine shipping on species at risk.

The Board’s requests for specialist or expert information or knowledge are based on the following with respect to each Federal Authority:

Federal Authority	Basis
DFO	Responsibilities and expertise include marine protected areas and certain species at risk that could be affected by marine shipping
ECCC	Responsibilities and expertise include certain species at risk that could be affected by marine shipping
TC	Regulatory authority and expertise includes marine shipping
VFPA	<ul style="list-style-type: none">• Regulatory authority and expertise includes marine shipping• Has relevant environmental interests, such as its Enhancing Cetacean Habitat and Observation (ECHO) program

Federal Authority	Basis
PPA	<ul style="list-style-type: none">• Regulatory authority and expertise includes marine shipping• Mandate is to establish, operate, maintain, and administer in the interests of safety an efficient pilotage service
HC	Possesses information or knowledge with respect to human health effects
PC	Mandate is to ensure that Canada's national parks and national marine conservation areas are protected
NRCan	Has consulted with Indigenous groups since the date of the Board's Report

Only the latest or most up-to-date information or knowledge is requested. The Board has stated that the record filed in the OH-001-2014 Certificate hearing is included as part of its record for the Reconsideration. Therefore, **if relevant information is already on the Board's online [public registry](#), provide links and page numbers rather than refile that information.** Where the information or knowledge is lengthy, provide a summary.

D. Requests

The Board requests specialist or expert information or knowledge in the possession of each of DFO, ECCC, and TC in relation to each of the matters in the List of Issues.

Without limiting the generality of that request, the Board includes some particular requests below, which also pertain to VFPA, PPA, HC, PC, and NRCan. Although the Board has suggested particular Federal Authorities for each topic below, it does not preclude other Federal Authorities from providing the information or knowledge if they possess it.

Topic 1: Greenhouse gas (GHG) emissions

Federal Authority(ies): ECCC and TC

Request: With regard to potential mitigation measures for GHG emissions from Project-related marine shipping, provide:

- a) an update of any changes to the relevant regulatory requirements since the date of the Board's Report;
- b) any information or knowledge concerning other plausible mitigation measures (including monitoring measures) to avoid, reduce, and/or offset the GHG emissions of Project-related marine shipping; and
- c) any information or knowledge concerning the safety, and technical and economic feasibility, of each such mitigation measure.

Topic 2: SARA-listed species

Federal Authority(ies): DFO and ECCC

Request: With regard to any SARA-listed species that are likely affected by Project-related marine shipping, or that have critical habitat that is likely to be affected by such shipping (including Southern resident killer whale [SRKW]), provide:

- a) a list of any species that have been newly listed, or any species that have seen a change to their designation, since the date of the Board's Report;
- b) a copy of the latest recovery documents (Recovery Strategies, Action Plans, and Management Plans) for all likely affected species (if these recovery documents have already been filed on the Board's record for the Project, provide links to them);
- c) any updates on the current status and planning for the survival and recovery actions noted in each recovery document;
- d) any updates on any monitoring that is underway or planned to determine the success of survival and recovery actions noted in each recovery document;
- e) for any species that does not have recovery documents, any information or knowledge concerning plausible mitigation measures (including monitoring measures) to avoid or lessen the effects of Project-related marine shipping; and
- f) any further information or knowledge concerning the safety, technical, and economic feasibility of each such survival, recovery, mitigation, and monitoring action or measure.

Topic 3: SRKW

Federal Authority(ies): DFO, TC, VFPA, and PPA

Request: With regard to SRKW, in addition to the request under Topic 2 above, provide:

- a) the most recent copies of the following:
 - o Recovery Strategy and any proposed updates or amendments;
 - o Action Plan and any proposed updates or amendments;
 - o Southern Resident Killer Whale: imminent threat assessment;
 - o Southern resident killer whale – A science based review of recovery actions for three at-risk whale populations;
 - o Oceans Protection Plan, and any relevant implementation information; and

- any status updates on the ECHO Program as it relates to mitigation measures to reduce potential threats to SRKW as a result of shipping activities, such as acoustic disturbance (underwater noise), physical disturbance (ship collisions), environmental contaminants, and availability of prey;
- b) any information or knowledge concerning the relationship between a vessel's speed and tonnage (including the different types of Project-related marine vessels under both loaded and unloaded conditions) and how much underwater noise the vessel creates;
- c) any information or knowledge concerning the potential effectiveness, safety, and technical and economic feasibility of each of the following potential mitigation measures, including how each could be implemented and monitored, and who (i.e., what authority, body, or organization) would be responsible for each aspect of implementation and monitoring:
 - altering shipping lanes to reduce adverse effects on SRKW, such as shifting lanes away from marine mammal congregation areas;
 - speed restrictions and altered shipping patterns, such as convoys, in order to reduce potential adverse effects such as underwater noise or the potential for ship strikes;
 - use of marine mammal on-board observers on Project-related marine vessels, and what actions need to be taken if SRKW are observed;
 - measures to increase abundance of prey to offset adverse effects from Project-related marine shipping;
 - vessel design (including hull and propeller) and maintenance measures for reducing adverse effects such as underwater noise from Project-related marine vessels;
 - any other measure that could avoid, reduce, and/or offset the adverse effects of Project-related marine shipping on SRKW; and
 - measures that could avoid or reduce cumulative adverse effects on SKRW.

Topic 4: Marine birds

Federal Authority(ies): ECCC

Request: With regard to marine bird species at risk that are potentially affected by Project-related marine shipping, in addition to the requests under Topic 2 above, provide:

- a) any information or knowledge on potential measures to avoid or reduce adverse effects such as mortality and sensory disturbance as a result of Project-related marine shipping; and

- b) any information or knowledge concerning the development and implementation of relevant monitoring systems.

Topic 5: Marine oil spills

Federal Authority(ies): ECCC, DFO, TC, VFPA, and PPA

Request: Provide:

- a) any information on research and findings, since the date of the Board's Report, related to the fate and behaviour and clean-up of oil (including diluted bitumen) spilled in marine environments that would be applicable to Project-related marine shipping; and
- b) any information or knowledge on any enhancements to marine oil spill prevention, emergency preparedness, and response measures since the date of the Board's Report, including any updates and information on the status of the implementation of the enhanced marine oil spill response regime, as referenced in Condition 133 set out in the Board's Report.

Topic 6: Marine safety, navigation, and disturbance

Federal Authority(ies): TC, VFPA, and PPA

Request: With regard to potential safety, navigation, and disturbance of other vessels, provide:

- a) any information or knowledge on the impacts of wakes created by Project-related marine shipping vessels at varying speeds on non-Project-related vessels crossing those wakes;
- b) any information or knowledge concerning measures to avoid, reduce, and/or offset the impacts of Project-related marine shipping vessels on non-Project-related vessels, including private recreational vessels;
- c) a copy of the most recent Port Information Guide;
- d) any proposed updates or amendments to marine pilotage services and measures to mitigate risks to persons, vessels, and the environment; and
- e) any updates on legislative or policy changes regarding tug escort requirements that would be applicable to Project-related marine shipping.

Topic 7: National parks and/or national marine conservation areas

Federal Authority(ies): PC and DFO

Request: Provide:

- a) a list of all current areas and any future areas under consideration (e.g., parks, protected areas, reserves, conservation areas) under PC's and DFO's responsibilities in the areas of Project-related marine shipping; and

- b) any information or knowledge concerning mitigation and monitoring measures to avoid, reduce, and/or offset the impacts of Project-related marine shipping on marine and shoreline ecosystem components, including any relevant information on legislative requirements or guidelines or best practices to conserve and protect these ecosystems.

Topic 8: Mitigation and monitoring measures for human health effects

Federal Authority(ies): HC

Request: Provide any additional information or knowledge, since the date of the Board's report, concerning mitigation and monitoring measures for human health effects that are likely to result from Project-related marine shipping.

Topic 9: Mitigation, accommodation, and monitoring measures proposed by Indigenous groups

Federal Authority(ies): NRCan, VFPA, and PPA

Request: Provide any information or knowledge, including any Indigenous traditional knowledge, that was raised by Indigenous groups since the date of the Board's Report concerning:

- a) the environmental and socio-economic effects of Project-related marine shipping;
- b) the potential impacts of Project-related marine shipping on Indigenous interests; and
- c) mitigation, accommodation, and monitoring measures in order to avoid, reduce, and/or offset adverse effects from Project-related marine shipping.

For any questions, please contact a Process Advisor by phone at 1-800-899-1265 (toll-free) or by email at TMX.ProcessHelp@neb-one.gc.ca.

Yours truly,

Original signed by

Sheri Young
Secretary of the Board

Attachment

c.c. All Parties

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