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Ms. Sheri Young
Secretary of the Board
National Energy Board
Suite 210, 517 Tenth Avenue SW
Calgary, AB T2R 0A8

VIA ELECTRONIC SUBMISSION

Dear Ms. Young,

Re:

Trans Mountain Pipeline ULC Application for the Trans Mountain Expansion Project, National Energy Board Reconsideration of aspects of its Recommendation Report as directed by Order in Council P.C. 2018-117,

**Hearing Order MH-052-2018 and
NEB File- OF-Fac-Oil-T260-2013-03 59**

Request for additional comments on the spatial limit of Project-related marine shipping

On October 5, 2018 The NEB solicited comments as to whether, assuming Project-related marine shipping is included as part of the “designated project” under review, this definition should include Project-related marine shipping between the Westridge Marine Terminal (WMT) and the territorial sea limit, or rather Project-related marine shipping between the WMT and the outer boundary of Canada’s Exclusive Economic Zone (EEZ). I support the latter position, i.e. the definition of the Project should include marine shipping to the outer edge of Canada’s EEZ off of the west coast of Canada. I arrive at this conclusion for the following reasons.

- A. The Canada Shipping Act (2001), which includes, *inter alia*, the Oil Pollution Regulations that would apply to this Project were it to be built, applies not just to the outer edge of the 12 mile territorial sea but to the outer edge of Canada’s EEZ;
- B. Several other pieces of federal legislation which may apply in one way or another to the marine shipping component of this Project, including the Oceans Act, the Fisheries Act, the Species and Risk Act, the Migratory Birds Convention Act and the Canadian Environmental Protection Act, also apply not just to the outer edge of the 12 mile territorial sea but also to the outer edge of the EEZ;
- C. Several federal government departments (and their agencies) that are Intervenor on his Project review have responsibilities relating to the pieces of legislation mentioned in A and B above. Necessarily, then, the purview of these departments and agencies extends not just to the outer edge of the territorial sea but to the outer edge of the EEZ. Principal among these departments are Transport Canada , Fisheries and Oceans Canada and Environment and Climate

Change Canada. And perhaps foremost among the agencies involved is the Canadian Coast Guard, with the pivotal role it plays in connection with Canada's marine oil spill response regime;

- D. As the Western Canada Marine Response Corporation, the sole, private sector, certified marine oil spill response organisation on Canada's west coast, itself states: "Our geographic area of response covers all 27,000 km of Western Canada's coastline, extending to the 200 nautical mile limit."¹

Within the afore-mentioned legislative, regulatory and administrative umbrella, there are also very real practical grounds for defining Project-related marine shipping right up to the outer edge of the 200 nautical mile EEZ. For one thing, fully-laden Project-related tankers leaving the WMT and travelling the Great Circle Route towards Asia would, for much of their journey along Canada's west coast, be sailing outside of the 12-mile territorial sea, but inside the 200 nautical mile EEZ. And while it is true that most tanker casualties worldwide do occur relatively close to coastlines, some have occurred mid-ocean. The most recent example of this was the January, 2018 incident involving a collision between the tanker MV Sanchi and a cargo ship, 160 nautical miles off the coast of Shanghai, which resulted in the sinking of the tanker and a total loss of its cargo.² The 1988 tanker casualty involving the MV Odyssey, which sank 700 nautical miles off the coast of Nova Scotia, en route Come by Chance, Newfoundland and which also involved a total loss of cargo, is another example of a tanker sinking mid-ocean, beyond the territorial sea³.

Two additional matters are, in the opinion of this Intervenor, relevant when deciding on the spatial limits of the Trans Mountain Expansion Project Reconsideration Hearing. First, as part of its Oceans Protection Plan, the Government of Canada is planning on establishing a Primary Environmental Response Team near Port Hardy, towards the northern tip of Vancouver Island⁴. The Canadian Coast Guard is also in the process of acquiring two emergency towing vessels for its west coast operations⁵. As for the private sector, as part of its \$150 million expansion plan, WCMRC is planning on establishing its own marine oil spill response bases on the western side of Vancouver Island, at Port Alberni and Ucluelet⁶. Thus, it should be part of the Panel's mandate to closely review these various plans, with a view to determining to what extent they will satisfy the requirements to provide speedy, efficient and effective response to a Project-related tanker casualty anywhere within the EEZ off of British Columbia, which is for the most part extremely remote, and where weather conditions and sea state can be both fierce and unpredictable, even at the best of times.

Another reason for adopting a broad spatial reach for the Reconsideration Hearing is that even if a Project-related tanker casualty occurs within the 12 nautical mile territorial sea, the stricken tanker could drift beyond the territorial sea and into the adjoining EEZ, requiring an appropriate response from the authorities. Also, the effects of an oil spill incident that occurs within the territorial sea could, depending on winds, currents and other factors, be felt well beyond that zone, into the EEZ itself. Thus,

¹ "Our Story", Western Canada Marine Response Corporation: <http://wcmrc.com/about/our-story/>

² "Sanchi oil tanker collision". https://en.wikipedia.org/wiki/Sanchi_oil_tanker_collision.

³ "Odyssey (tanker)": [https://en.wikipedia.org/wiki/Odyssey_\(tanker\)](https://en.wikipedia.org/wiki/Odyssey_(tanker)).

⁴ "Enhanced environmental response under the Oceans Protection Plan", https://www.canada.ca/en/fisheries-oceans/news/2017/02/enhanced_environmentalresponseundertheoceansprotectionplan.html

⁵ "\$67M for two emergency tow vessels for B. C. coast", <https://www.cowichanvalleycitizen.com/news/67m-for-two-emergency-towing-vessels-for-b-c-coast/>

⁶ "Bases", <http://wcmrc.com/preparedness/bases/>.

various species of marine birds, some of them migratory, which fly well offshore could well be impacted by drifting or submerged oil from an incident that happened within the territorial sea. Various species of fish and marine mammals (such as offshore killer whales and migrating humpbacks) could also be impacted.

In closing, in the view of this Intervenor, a strong case can be made for defining the designated project to include Project-related shipping to the outer edge of the EEZ. And in order to accommodate the Panel's extremely tight timeline, it is suggested that should the Panel choose to adopt the wider geographic expanse for its mandate, the Reconsideration Hearing could focus its gaze on: The adequacy- or not, of Canadian Coast Guard and Western Canada Marine Response Corporation's plans for marine oil spill response operational improvements in, respectively, Port Hardy, Port Alberni and Ucluelet; Canadian Coast Guard's emergency tow capacity enhancements; and whether both agencies should enhance their Prince Rupert marine response bases to accommodate the anticipated increase in Project-related tanker traffic off the west coast of Haida Gwaii.

Please note that these comments are without prejudice to the Intervenor's views as to whether the marine shipping component of the Project under consideration should be approved by this Panel, or instead rejected on the grounds that the risks are too great. No doubt the time and place to advance these views will come later on in the Hearing process.

I thank you for the opportunity to provide my input.

Sincerely,

Gerald Graham