

National Energy  
Board



Office national  
de l'énergie

File OF-Fac-Oil-T260-2013-03 59  
12 October 2018

Mr. Shawn H. T. Denstedt  
Osler, Hoskin & Harcourt LLP  
Suite 2500, 450 – 1<sup>st</sup> Street SW  
Calgary, AB T2P 5H1  
Email [regulatory@transmountain.com](mailto:regulatory@transmountain.com)

Dear Mr. Denstedt:

**Trans Mountain Pipeline ULC (Trans Mountain)  
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  
MH-052-2018 (Reconsideration)  
Filing Requirements for Trans Mountain**

**A. Overview**

The purpose of this letter is to describe the additional Filing Requirements for Trans Mountain that are required for the Reconsideration, the background for which is described in the Board's [letter](#) of 26 September 2018.

The Board requires that Trans Mountain file the information outlined in this letter on or before **3:00 pm Pacific time (4:00 Mountain time) on 31 October 2018**.

**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.

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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. Filing Requirements

**The Board requires Trans Mountain to file evidence on each of the matters in the List of Issues.**

Without limiting the generality of that requirement, the Board includes some particular Filing Requirements below. **Trans Mountain should only file new or updated evidence.** 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 [public registry](#), provide links and page numbers rather than refiling that information.**

#### **Topic 1: *Species at Risk Act*- (SARA-) listed species**

**Request:** With regard to Issue No. 5 on the List of Issues, provide a list of any species that might be affected by Project-related marine shipping that have been newly listed under the SARA or have seen a change to their designation since the date of the Board’s Report.

#### **Topic 2: Mitigation and monitoring measures**

**Request:** For each of the four significant adverse effects noted in Issue No. 2 on the List of Issues (i.e., greenhouse gas emissions, Southern resident killer whale [SRKW], traditional Indigenous use associated with SRKW, and the potential effects of a large or credible worst-case spill), and for each SARA-listed species noted in Issue No. 5 (taking into account any changes in listing noted in response to Topic 1 above), provide:

- a) an update and discussion on any plausible mitigation measures to avoid, reduce, and/or offset adverse effects from Project-related marine shipping, including any changes to relevant regulatory requirements, since the date of the Board’s Report;
- b) a discussion on the safety, and technical and economic feasibility, of each such mitigation measure;
- c) an update on any plausible monitoring measures to monitor adverse effects or the effectiveness of mitigation measures;
- d) a discussion on who (i.e., what authority, body, or organization) would be responsible for each aspect of implementation for each mitigation and monitoring measure; and

- e) an update on any additional consultation that Trans Mountain has had with the public, Indigenous groups, and government authorities, including any community knowledge and Indigenous traditional knowledge obtained, with regard to each of the above.

### **Topic 3: SRKW**

**Request:** With regard to SRKW, discuss 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:

- a) altering shipping lanes to reduce adverse effects on SRKW, such as shifting lanes away from marine mammal congregation areas;
- b) 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;
- c) use of marine mammal on-board observers on Project-related marine vessels, and what actions need to be taken if SRKW are observed;
- d) measures to increase abundance of prey to offset adverse effects from Project-related marine shipping;
- e) vessel design (including hull and propeller) and maintenance measures for reducing adverse effects such as underwater noise from Project-related marine vessels;
- f) any other measure that could avoid, reduce, and/or offset the adverse effects of Project-related marine shipping on SRKW; and
- g) measures that could avoid or reduce cumulative adverse effects on SKRW.

### **Topic 4: Marine birds**

**Request:** In addition to the topics above, with regard to marine bird species that are potentially affected by Project-related marine shipping, 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

**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 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

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

- a) any additional evidence 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 additional evidence 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) any proposed updates or amendments to marine pilotage services and measures to mitigate risks to persons, vessels, and the environment; and
- d) any updates on legislative or policy changes regarding tug escort requirements that would be applicable to Project-related marine vessels.

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](mailto:TMX.ProcessHelp@neb-one.gc.ca).

Yours truly,

*Original signed by*

Sheri Young  
Secretary of the Board

c.c. All Parties