

Hearing Order MH-052-2018
Trans Mountain Pipeline ULC
Application for the Trans Mountain Expansion Project

**Opening Statement of
Raincoast Conservation Foundation**

And

Living Oceans Society

Dated:

December 5, 2018

Opening Statement for Evidence of Raincoast Conservation Foundation and Living Oceans Society

1. On May 19, 2016, the National Energy Board (the “Board”) issued a report recommending approval of the Trans Mountain Expansion Project (the “Project”), following a review and environmental assessment of the Project under the *National Energy Board Act* and the *Canadian Environmental Assessment Act, 2012* (“CEAA 2012”). On November 29, 2016, the Governor in Council issued Order in Council P.C. 2016-1069, approving the Trans Mountain Expansion Project (the “Project”). On August 30, 2018, the Federal Court of Appeal quashed the Order in Council and remitted the matter of Project approval back to the Governor in Council for redetermination, on the basis that the Board had unjustifiably excluded marine shipping from its environmental assessment and failed to meet requirements of the *Species at Risk Act* (“SARA”). The Court held that the Governor in Council must, in its redetermination, refer the Board’s recommendations back to the Board for reconsideration. On October 12, 2018, the Board issued Hearing Order MH-052-2018 commencing the present reconsideration hearing (the “Reconsideration”).
2. In this Reconsideration the Board must comply with the legal requirements of both CEAA 2012 and SARA. This requires the Board to, among other things, consider the significance of environmental effects of Project-related shipping, including the environmental effects of malfunctions or accidents that may occur in connection with Project-related shipping and any cumulative environmental effects that are likely to result from the Project-related shipping in combination with other physical activities that have been or will be carried out (CEAA 2012, s. 19). The Board must take into account the significance of the effects of Project-related shipping in its recommendation to Cabinet about whether the Project is likely to result in significant adverse environmental impacts and if so whether they are justified (CEAA 2012, s. 29).
3. The Board is also required to identify the adverse effects of the Project on any listed wildlife species and its critical habitat that may be affected by Project related shipping, and ensure that measures consistent with any applicable recovery strategy or action plan are taken to avoid or lessen those effects (SARA, s. 79).

4. Raincoast Conservation Foundation (“Raincoast”) and Living Oceans Society (“Living Oceans”) were interveners in the Board’s previous hearing concerning the Project (the OH-001-2014 Certificate hearing) and are interveners in the Reconsideration.
5. The evidence of Raincoast and Living Oceans for the Reconsideration consists of new and updated reports about the effects of Project-related shipping. This evidence is provided to assist the Board in carefully considering the environmental effects of Project Related shipping, as well as identifying adverse effects on federally listed species at risk, including the endangered Southern Resident Killer Whales (the “Southern Residents”).
6. The evidence updates and expands upon Raincoast and Living Oceans’ previously filed evidence, reflecting new developments since evidence about the potential effects of project related shipping was provided to the Board in the previous hearing in 2015, including new evidence of:
 - a. the recent decline of the Southern Residents from 82 in May 2015 to 74 at present, and the May 2018 determination by the federal Minister of Fisheries and Oceans and Minister of Environment and Climate Change that the Southern Residents face “imminent threats” to their survival and recovery;
 - b. the revision of the Resident Killer Whale Recovery Strategy to include new areas of critical habitat;
 - c. the continued decline of South Coast Chinook salmon, the primary prey species of the Southern Residents. This year saw the worst returns of South Coast Chinook on record. In November 2018, the Committee on the Status of Endangered Wildlife in Canada assessed several populations of Chinook salmon for listing under the *Species at Risk Act*;
 - d. the approval of the dispersant Corexit 9500 for use in Canada;
 - e. the publication of the National Academy of Sciences entitled “Spills of Diluted Bitumen from Pipelines: A Comparative Study of Environmental Fate, Effects, and Response” (the “NAS Report”), which offers the most comprehensive analysis to date of diluted bitumen spill properties, environmental and health impacts, and effectiveness of response methods; and

- f. the October 2018 publication of the Special Report of the Inter-governmental Panel on Climate Change on the effects of global warming of 1.5°C versus 2 °C (the “IPCC Report”). The IPCC Report concludes that limiting warming to 1.5°C is possible within the laws of chemistry and physics but doing so would require unprecedented changes. Limiting global warming to 1.5°C would require rapid, far reaching and unprecedented changes in all aspects of society. Their October 2018 Report evaluates the climate change impacts that could be avoided by limiting global warming to 1.5°C compared to 2°C, or more. For instance, by 2100, global sea level rise would be 10 cm lower with global warming of 1.5°C compared with 2°C. The likelihood of an Arctic Ocean free of sea ice in summer would be once per century with global warming of 1.5°C, compared with at least once per decade with 2°C. Coral reefs would decline by 70-90 percent with global warming of 1.5°C, whereas virtually all (> 99 percent) would be lost with 2°C.
7. Raincoast’s new evidence for the Reconsideration consists of a statement of evidence and five attached reports. The statement of evidence is an updated version of Raincoast’s 2015 statement of evidence (Filing ID A4L9F2). It describes the Southern Residents, their endangered status, the threats to them, and effects the Project will have on them.
 - a. Attachment A to the Raincoast statement is an update to the Population Viability Assessment produced by Dr. Robert Lacy et al. and filed by Raincoast in 2015 and to a peer-reviewed version of that report which was published in a scientific journal in 2017 and is appended to the new report.
 - b. Attachment B to the Raincoast statement is a report concerning impacts of a tanker sourced oil spill on availability of the Southern Residents’ preferred prey, Chinook salmon – a legally protected biological feature of critical habitat. It differs from the 2015 report Raincoast filed concerning Chinook salmon in the previous hearing, by Kate Logan et al., which focused on impacts from the pipeline portion of the Project on the Fraser River and estuary, salmon and other forage fish.
 - c. Attachment C to the Raincoast statement is a report by Dr. Scott Veirs et al. on impacts of Project-related shipping on Southern Residents, and in particular noise impacts and potential mitigation. It updates and expands upon the 2015 report by

Dr. Christopher Clark that Raincoast filed in the previous hearing, concerning acoustic and physical disturbance from Project-related shipping.

- d. Attachment D to the Raincoast statement is a report by toxicologist Kate Logan concerning the oil spill dispersant Corexit 9500. This dispersant was approved for use in Canada after the previous hearing.
 - e. Attachment E to the Raincoast statement is a report prepared by Dr. Deborah Giles, describing her observations of the decline in the Southern Resident killer whale population in the summer of 2018, and providing an update of the size of the Southern Resident population.
 - f. Attachment F to the Raincoast statement is Fisheries and Oceans Canada's new revised Recovery Strategy for the Southern Residents.
8. The statement further identifies that Raincoast continues to rely on the reports it filed in 2015 in the previous hearing. These reports include evidence relevant to the Board's task of taking into account and identifying measures to avoid or lessen the environmental impacts of Project related shipping.
9. The evidence of Living Oceans consists of a statement of evidence attaching two reports:
- a. Attachment A to the Living Oceans Statement is a report prepared by Dr. Jeffrey Short, which updates his 2015 report that Living Oceans filed in the previous hearing. Dr. Short's report discusses and appends the NAS Report.
 - b. Attachment B to the Living Oceans Statement is the IPPC Report.
10. The Living Oceans statement also identifies which of the reports Living Oceans filed in 2015 in the previous hearing that it continues to rely on. These reports include evidence relevant to the Board's task of taking into account and identifying measures to avoid or lessen the environmental impacts of Project-related shipping.
11. Further, both the Raincoast and Living Oceans statements confirm that, due to time constraints, they were unable to commission expert evidence concerning the effects of Project-related shipping on all potentially affected federally listed species at risk. They are concerned that, due to the short time for this reconsideration, there will not be time to properly identify the adverse effects of the Project on each of these species, nor to identify measures to lessen or avoid species-specific impacts.

12. The evidence provided to the Board raises real questions about whether the impacts of Project-related shipping can be mitigated. For example, Raincoast and Living Oceans are concerned that it will not be possible to mitigate the effects of an oil spill in the Fraser Estuary. They are also concerned that it will not be possible to mitigate impacts of Project-related shipping on the Southern Residents and their critical habitat. Finally, they are also concerned that no measures are proposed or available to mitigate the impacts of significant marine greenhouse gas emissions already identified by the Board, and that, in the absence of a federal regulatory framework for greenhouse gas emissions, there is no meaningful way to even monitor this impact.