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October 14, 2016

Jocelyne Beaudet, Panel Chair;
David Levy, Panel Member;
Diana Valiela, Panel Member
c/o Debra Myles, Panel Manager
Canadian Environmental Assessment Agency
160 Elgin Street
Ottawa, ON K1A 0H3
Sent by email to: Panel.RBT2@ceaa.gc.ca

Dear Ms. Beaudet:

Subject: Transport Canada Comments on Sufficiency and Technical Merit of the Roberts Bank Terminal 2 Environmental Assessment Information

Further to the Review Panel's June 9, 2016 letter to Transport Canada (TC) regarding the Review Panel process for the Roberts Bank Terminal 2 Project, TC has evaluated the environmental assessment records for sufficiency of information related to TC's mandate and areas of expertise.

The results of TC's review are presented in the document that follows.

We trust this information addresses your requests. Thank you for this opportunity to provide comments. Please feel free to contact Gina Aitchison, Senior Environmental Officer, at gina.aitchison@tc.gc.ca if you have any questions.

Sincerely,

<Original signed by>

Lori Young,
Regional Director, Programs - Pacific
Transport Canada

Attachment – Transport Canada's Proposed Information Requests and Comments on the Sufficiency and Technical Merit of the Environmental Assessment Information

Transport Canada's Proposed Information Requests and Comments on the Sufficiency and Technical Merit of the Environmental Assessment Information

Organization: Transport Canada (TC)

General Comments:

TC's review of the Sufficiency and Technical Merit of the Roberts Bank Terminal 2 (the Project) environmental assessment information, including the Environmental Impact Assessment (EIS), Marine Shipping Addendum (MSA), and associated documents focused on our mandate and areas of expertise including:

- marine safety and security,
- navigation protection,
- civil aviation,
- rail safety,
- the transportation of dangerous goods, and
- Canada Port Authorities

TC's June 24, 2016 submission to the Review Panel provides more information on the expertise that TC may contribute to the Project review (CEAR# 464, available at: <http://www.ceaa.gc.ca/050/documents/p80054/114803E.pdf>).

TC found the environmental assessment information related to areas of TC's mandate to be sufficient, save for the following comments.

TC found that project projections regarding container percentages, forecasted volumes, and projected dates by when new container terminal capacity will be required seem reasonable and accurate. We note the Review Panel's request in its Information Package 1 that the proponent provide recent container traffic forecast studies not already presented in the EIS (CEAR# 559, available at <http://www.ceaa.gc.ca/050/documents/p80054/115693E.pdf>). TC agrees with the Review Panel's request since it will be important to have the most recent data and forecasts and the Department understands that a more recent 2016 study has been released.

In relation to Indigenous Consultation, TC would like to highlight an Information Request originally provided to the Canadian Environmental Assessment Agency in TC's EIS Completeness Review submitted on June 16, 2016 (CEAR# 352, available at <http://www.ceaa.gc.ca/050/documents/p80054/104006E.pdf>) in Table 1. We also add a second related Information Request.

For additional comments related to Indigenous Groups and the MSA (in the areas of Methodology, Assessment of Impacts, Accommodation, Cumulative Effects and Outstanding Indigenous Concerns), please see the comments submitted by the Canadian Environmental Assessment Agency on behalf of the Government of Canada on August 31, 2016 (CEAR# 526, available at: <http://www.ceaa.gc.ca/050/documents/p80054/115503E.pdf>).

Marine shipping associated with the Project is governed by Canada's marine safety and security system. Vessels must comply with the *Canada Shipping Act, 2001* to transit in Canadian waters; therefore, no special permits or approvals are required for the Project. However, TC's Marine Safety and Security group identified a number of areas requiring clarification. TC's clarification is provided in Table 2.

Following the TC, Canadian Coast Guard and Pacific Pilotage Authority's Voyage of a Vessel presentation at the September 16, 2016 Orientation Session #2, the Review Panel asked that TC provide information on the Marine Compensation and Liability Pillar of Canada's Marine Safety System.

A description of Canada's Marine Compensation and Liability system is included in Section 7.0 (pg. A-28) of TC's 2015 "Canada's Marine Safety and Security System" document as Appendix 3-A of the MSA filed by the proponent (CEAR# 316, available at: <http://www.ceaa.gc.ca/050/document-eng.cfm?document=103683>). Any updates to the system will be reflected in our Written Submission to the Review Panel during the Hearing phase of the Project review.

Table 1: Proposed Information Requests on the Sufficiency and Technical Merit of the Environmental Assessment

Information Source	Proposed Information Request	Rationale
<p>IR #1 – 9.5.6 Potential Interactions and Effects on Current Use – Suggested Mitigation Measures 9.5.11.3 Potential Impacts of Vessel Transit on the Exercise of Asserted or Established Aboriginal Rights – Suggested Mitigation Measures Pg. 15 Executive Summary</p>	<p>Transport Canada would like to highlight an Information Request submitted as part of TC’s Completeness Review on June 16, 2016 (CEAR# 352, available at: http://www.ceaa.gc.ca/050/documents/p80054/104006E.pdf).</p> <p>For the Review Panel’s reference, the Information Request was as follows:</p> <p>TC would like to request clarity on the mitigation measures being proposed in Section 9.5.6 of the Marine Shipping Addendum, as follows:</p> <p>a) Please provide more detail on the intended effect of the proposed mitigation measures, specifically how the measures will mitigate the potential adverse impacts of the project on the potential or established Aboriginal and Treaty rights and related interests with respect to marine shipping and shipping lane location.</p> <p>b) Please clarify which “appropriate regulatory authorities” are being considered by VFPA and if VFPA has engaged with any regulatory authorities to discuss potential mitigation</p>	<p>Transport Canada seeks more detailed responses to these questions, in addition to the related Information Requests by the Canadian Environmental Assessment Agency on behalf of the Government of Canada on August 31, 2016 (CEAR# 526, available at: http://www.ceaa.gc.ca/050/documents/p80054/115503E.pdf).</p> <p>Greater clarity is required regarding mitigation measures in the Marine Shipping Addendum. For the Review Panel’s reference, the original rationale relating to TC’s Information Request was as follows:</p> <p>Specifically, VFPA proposes two mitigation measures for consideration by “...appropriate regulatory authorities” including:</p> <ul style="list-style-type: none"> • Consultation on the development of a potential marine shipping activities communication plan that would provide affected Aboriginal groups with real-time information regarding the movement of Project-associated shipping traffic through the Marine Shipping Area, including <ul style="list-style-type: none"> - the estimated time of arrival of Project-associated container ships and their expected duration of use of the shipping lanes for

Information Source	Proposed Information Request	Rationale
	<p>measures.</p> <p>c) Could VFPA clarify whether they are suggesting that these mitigation measures be developed via consultation with interested parties? If so, please specify with who and how. <u>Or</u>, is VFPA suggesting that there should be consultation on whether the mitigation measures would be considered sufficient? If so, please specify with who and how.</p> <p>d) What role will VFPA play in communication plans and information collection? (e.g. communication and outreach programs, including information regarding timing of movement of container ships). Has VFPA engaged regulatory authorities who may play a role in communication and outreach for marine shipping?</p>	<p>inbound and outbound movements; and,</p> <p>- Circumstances outside normal operations that might affect the expected frequency or concentration of Project-associated vessel traffic along the shipping routes (e.g. clearing backlogs in shipping traffic due to storms requiring ships to temporarily anchor before proceedings).</p> <ul style="list-style-type: none"> • Consultation with the affected Aboriginal groups to identify measures that would reduce the impact of the international shipping lanes to fishing by Aboriginal groups. <p>VFPA also describes mitigation measures in the Executive Summary as “Suggested mitigation includes development of a marine shipping activities communication plan and consultation with affected Aboriginal groups concerning the outbound international shipping lane location.”</p>
<p>IR #2 – 9.5.6 Potential Interactions and Effects on Current Use – Suggested Mitigation Measures 9.5.11.3 Potential Impacts of Vessel Transit on the Exercise of Asserted or Established Aboriginal Rights – Suggested Mitigation Measures</p>	<p>Given the significance of these proposed mitigation measures for VFPA’s findings that “residual effects from activities on Current Use are expected to be negligible,” and that the mitigation measures are reliant on entities outside of VFPA, what further measures would VFPA propose and what would be the resulting conclusions in relation to the residual and cumulative effects?</p>	<p>Given that the two mitigation measures described in TC’s IR#1 are outside of VFPA’s care and control, the effectiveness of those mitigation measures relies on outside parties for implementation. Page 9.5-146 of the MSA draws conclusions on the assumption that these mitigation measures might be implemented and are expected to be effective. Additional mitigation measures would add greater certainty to the conclusion of negligible residual effects.</p>

Information Source	Proposed Information Request	Rationale
Pg. 15 Executive Summary		

Table 2: Clarification/Comments regarding the Environmental Assessment Information

Information Source	Content	Clarification/Comments
<i>Environmental Impact Statement</i>		
Clarification #1: 4.4.2.1 Container Ship Manoeuvres: Ballast and Bilge Water Management Pg. 4-44	Ships will ballast or de-ballast water as required near or at the terminal berth. To prevent the invasion of foreign species into local waters, international regulations, through the International Maritime Organization (IMO), are managed by Transport Canada. All commercial deep sea vessels are required to carry out a ballast water exchange prior to entering Canadian waters. This is done outside the exclusive economic zone of 200 nautical miles (nm) and in water deeper than 2,000 m. An official ballast water exchange report must be completed and filed to Marine Communications and Traffic Services (Coast Guard) at least 96 hours prior to entry into Canadian waters. In addition, an official entry must be made in the ship's logbook recording the time and position of the ballast water exchange. The requirement for vessels to complete this ballast flush well outside Canadian waters supports the objective of preventing any foreign organisms from entering into the local ecosystem. The U.S.A. has similar requirements, and vessels arriving from the Puget Sound area are required to forward the completed U.S. forms to Canadian authorities prior to entry into Canadian waters.	TC wishes to provide the following correction: As the proponent points out, ballast water exchange takes place outside Canada's Exclusive Economic Zone, however the official report is sent directly to TC, not to MCTS (CCG). TC also wishes to clarify that within Canadian waters, ballast water is regulated by the Ballast Water Control and Management Regulations. Also, the International Convention for the Control and Management of Ships' Ballast Water and Sediments, to which Canada is a signatory, will come into force on September 8, 2017.

Information Source	Content	Clarification/Comments						
Clarification #2: 21.1.3 Vessel Navigation Pg. 21-3	<p>- <i>Marine Liability Act</i> makes the owners or operators of vessels liable for that vessel and the specific consequences of its operation;</p>	TC adds that in addition to dealing with the liability of ship-owners and vessel operators, the <i>Marine Liability Act</i> also establishes compensation funds for parties involved in maritime accidents, including oil spills from ships.						
Clarification #3: Table 35-1 Potential Environmental Effects (Before Mitigation) and Mitigation Applied Pg. 35-2	<p>Table 35-1 Potential Environmental Effects (Before Mitigation) and Mitigation Applied</p> <table border="1" style="width: 100%;"> <thead> <tr> <th colspan="2" style="text-align: left;">Marine Mammals (Section 14.0)</th> </tr> </thead> <tbody> <tr> <td style="width: 50%;"> Change in acoustic environment resulting in behavioural effects or acoustic masking for southern resident killer whale, North Pacific humpback whale, and Steller sea lion during construction and operation phases </td> <td style="width: 50%;"> Reduction Measures: -Implementation of Construction Environmental Management Plan and supporting plans: Construction Compliance Monitoring Plan; Underwater Noise Management Plan; Marine Mammal Observation Plan; Environmental Training Plan. </td> </tr> <tr> <td> Physical disturbance from vessel strikes for southern resident killer whale and North Pacific humpback whale during construction and operation phase </td> <td> Reduction Measures: -Implementation of Construction Environmental Management Plan and supporting plans: Construction Compliance Monitoring Plan; Environmental Training Plan. -Implementation of Operation Environmental Management Plan and supporting plan: Environmental Training Plan. </td> </tr> </tbody> </table>	Marine Mammals (Section 14.0)		Change in acoustic environment resulting in behavioural effects or acoustic masking for southern resident killer whale, North Pacific humpback whale, and Steller sea lion during construction and operation phases	Reduction Measures: -Implementation of Construction Environmental Management Plan and supporting plans: Construction Compliance Monitoring Plan; Underwater Noise Management Plan; Marine Mammal Observation Plan; Environmental Training Plan.	Physical disturbance from vessel strikes for southern resident killer whale and North Pacific humpback whale during construction and operation phase	Reduction Measures: -Implementation of Construction Environmental Management Plan and supporting plans: Construction Compliance Monitoring Plan; Environmental Training Plan. -Implementation of Operation Environmental Management Plan and supporting plan: Environmental Training Plan.	TC notes that while it does not regulate underwater acoustic environment or vessel strikes, the department has an interest in being kept informed of VFPA's work with marine pilots on the marine mammal awareness pamphlet.
Marine Mammals (Section 14.0)								
Change in acoustic environment resulting in behavioural effects or acoustic masking for southern resident killer whale, North Pacific humpback whale, and Steller sea lion during construction and operation phases	Reduction Measures: -Implementation of Construction Environmental Management Plan and supporting plans: Construction Compliance Monitoring Plan; Underwater Noise Management Plan; Marine Mammal Observation Plan; Environmental Training Plan.							
Physical disturbance from vessel strikes for southern resident killer whale and North Pacific humpback whale during construction and operation phase	Reduction Measures: -Implementation of Construction Environmental Management Plan and supporting plans: Construction Compliance Monitoring Plan; Environmental Training Plan. -Implementation of Operation Environmental Management Plan and supporting plan: Environmental Training Plan.							

Information Source	Content						Clarification/Comments
						-Distribution of a marine mammal awareness pamphlet, "Marine Mammals of the Roberts Bank Area" to marine pilots working within PMV jurisdiction.	
Clarification #4: Table 35-2 Proposed Mitigation Measures and Commitments Pg. 35-11	Table 35-2 Proposed Mitigation Measures and Commitments						TC does not need to be consulted on the land-based portion of the Land and Marine Traffic Management Plan, Table 35-2, row 2.15. TC recommends that VFPA also consult CCG on the Communications Plan.
	Ref	Mitigation Measures and Commitments	Timing	Delivered By	Reviewing Agencies	PMV to Consult with:	
	2.15	PMV will ensure the Infrastructure Developer and Terminal Operator will work with federal and provincial regulatory authorities and local governments, including B.C. Ministry of Transportation and Infrastructure (MOTI), Corporation of Delta, B.C. Ferries, and Tsawwassen First Nation to develop the land-based portion of the Land and Marine Traffic Management	Construction	PMV, Infrastructure Developer, Terminal Operator, Concessionaire	CEA Agency	TC, COD, MOTI, appropriate Aboriginal groups, Delta Police Department, Delta Fire and Emergency Services, the B.C. Ambulance Service, Worksafe BC	

Information Source	Content					Clarification/Comments
		Plan. The plan will provide for public and worker safety and the timely exchange of information regarding traffic management during Project construction, including traffic control measures, short-term traffic interruptions, and temporary road restrictions and re-routing with Tsawwassen First Nation, Corporation of Delta, Delta Police Department, Delta Fire and Emergencies Services, and B.C. Ambulance Services.				
Marine Shipping Addendum						
Clarification #5: Exec Summary Pg. 15	Suggested mitigation includes development of a marine shipping activities communication plan and consultation with affected Aboriginal groups concerning the outbound international shipping lane location. These mitigation measures for addressing potential incremental effects on current use are expected to also be effective at addressing the potential incremental impact to the exercise of Aboriginal and treaty					TC notes that the proponent suggests consulting with affected Indigenous groups concerning the outbound international shipping lane location. TC points out that the proponent does not have the jurisdiction to undertake such consultations, and only TC, as

Information Source	Content	Clarification/Comments
	rights. No additional mitigation measures have therefore been suggested for the potential incremental impact to the exercise of Aboriginal and treaty rights.	Canada’s representative at the International Maritime Organization, can undertake such consultations. The proponent appears to have partially based their conclusion of “negligible residual effects” on the actions of TC. TC has submitted an IR with respect to this (see IR#2 in Table 1).
Clarification #6: 7.3.5 Incremental Changes to Marine Water Quality from Marine Shipping Associated with the Project Pg. 7.3-1	Bilge water must be treated to remove oils and grease prior to discharge as per regulatory requirements. Therefore, releases of contaminants or oily water from ballast or bilge water discharges are not anticipated to result from routine operations.	TC notes that the Vessel Pollution and Dangerous Chemicals Regulations set limits on discharges, but they would allow for project vessels to discharge an oily mixture above acceptable levels, according to the vessel pollution regulations in the marine shipping area provided the vessel is en route and the effluent does not exceed 15 ppm.
Clarification #7: 8.0 Marine Biophysical Environment Effects Assessments Acoustic Disturbance Pg. 8.2–55	Studies currently under consideration by the ECHO Program relating to underwater noise include the following: ... <ul style="list-style-type: none"> • A partnership with Transport Canada to install a vessel underwater noise listening station in the Strait of Georgia where ships will “weigh in” as they transit over the station, providing a better understanding of the underwater noise levels of different vessels; and • A partnership with Transport Canada to test an in-water hull cleaning technology and measure underwater noise levels of vessels before and after cleaning, to understand whether hull cleaning can reduce underwater noise emissions. 	TC notes that this information was correct at the time of submission. The proponent should consider posting any updated information on the ECHO Program’s work on CEAR.

Information Source	Content	Clarification/Comments
<p>Clarification #8: 9.5.4.10 Pacheedaht First Nation Marine Fish and Fish Habitat Pg. 9.5-68</p>	<p>In 2005, Pacheedaht say that Transport Canada moved the outbound shipping lane north, such that it now intersects the Swiftsure Bank closed area and other hereditary fishing grounds identified by the Pacheedaht in the Study Area (Pacheedaht First Nation 2015a,b). Pacheedaht First Nation has expressed concern for the safety of their members while trying to access and use Swiftsure Bank, particularly but not only in foggy conditions that frequently prevail at Swiftsure Bank and in Juan de Fuca Strait, and during which ships can “appear suddenly out of the fog, moving at speed, causing fear and anxiety” (Pacheedaht First Nation 2015a). Members have reported that they have had to pull up anchor to get out of the way of a passing ship, or cut anchor lines in emergency situations (NEB 2014p).</p>	<p>TC notes that the widening of the outbound lane came into force December 2006. The previous lane was narrower and also passed over Swiftsure Bank. The lane was widened to dilute the density of traffic transiting the area to reduce the encounters between transiting vessels and vessels fishing in the area.</p>
<p>Clarification #9: 10.4.4.1 Western Canada Marine Response Corporation Capabilities Pg. 10-20</p>	<p>Western Canada Marine Response Corporation is the Transport Canada-certified Response Organisation for the west coast of Canada. Upon request of a Responsible Party or upon direction of the designated authorities (i.e., CCG or Transport Canada), WCMRC would execute the spill containment and clean-up.</p>	<p>TC wishes to provide the following correction: TC does not have the authority to direct the response organization (RO).</p>
<p>Clarification #10: 10.5.10 Marine Commercial Use Pg. 10-115</p>	<p>Compensation to mitigate damages due to a collision between vessels would typically be addressed through insurance carried by the affected vessel owners. In the event of a collision between a container ship and another vessel (including a fishing vessel), where the owner of the container ship is determined to be fully or partially liable, funds for damage compensation and any penalties would come from the ship owner’s protection and indemnity insurance provided through a Protection and Insurance (P&I) Club. In the case of an oil spill, the funds for spill response, damage compensation, and penalties would initially be from the ship owner’s protection and indemnity insurance that all international vessels must</p>	<p>TC wishes to provide the following correction: The proponent’s description of liability and compensation applies to spills from oil tankers. For spills from container ships associated with the project, liability would be assigned according to the International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Convention), and compensation for eligible losses would be available under the Bunker Convention and Canada’s domestic Ship-Source Oil Pollution</p>

Information Source	Content	Clarification/Comments
	<p>have if carrying more than 2,000 metric tons of oil either in bulk or as fuel for the vessel. The liability and compensation framework set out in Part 6 of the Marine Liability Act requires ship and cargo owners to share the financial burden of providing compensation for ship-source pollution incidents. In the event of a spill where the costs of damages and the clean-up exceed the ship owner's liability (the limits of a ship owner's liability are set out in the Marine Liability Act), claimants have access to one or more additional layers of compensation depending on the type of oil and the type of ship (Tanker Safety Panel Secretariat 2013). The initial tier of compensation in this scheme is provided under the International Convention on the Establishment of the International Fund for Compensation for Oil Pollution Damage, the second tier is the Ship-Source Oil Pollution Fund, and the third tier is the International Oil Pollution Compensation Supplementary Fund.</p>	<p>Fund.</p> <p>TC also adds the following language: Part 6 and Part 7</p>