

Hearing Order OH-001-2014
Trans Mountain Pipeline ULC (Trans Mountain)
Application for the Trans Mountain Expansion Project
Motions to compel full and adequate responses by intervenors to information requests (IRs) from intervenors and Trans Mountain
By Board of Friends of Ecological Reserves to Government of Canada.

Many of the IRs were addressed and for that the Board of FER appreciates the effort and details provided. Those we reviewed and that were considered inadequate or avoided the response to answer have been highlighted. Submitted Electronically to NEB July 24th 2015 final column submitted August 14th ..

Government of Canada (GoC) Information Requests from the Board of the Friends of Ecological reserves directed to the following Departments of the Government of Canada: NR Canada, Environment Canada, Transport Canada, DFO,		Board of Friends of Ecological Reserves (FER)			
IR #	IR wording ¹	Responding intervenor's response to IR ²	Motion author's explanation for claiming IR response to be inadequate ³	Responding intervenor's response to motion ⁴	Motion author's reply ⁵
1	<p>Preamble. For Transport Canada (TC). Information Requests from the Board of the Friends of Ecological reserves directed to the following Departments of the Government of Canada: NR Canada, Environment Canada, Transport Canada, DFO,</p> <p>The Ocean's Act pre-ambble states "<i>WHEREAS Canada promotes the wide application of the precautionary approach to the conservation, management and exploitation of marine resources in order to protect these resources and preserve the marine environment</i>". This signals the need for government departments to take a precautionary approach to protection of the marine environments to be consistent with the legislated intensions. The Board of FER is seeking information on improving marine safety and reducing risk of groundings due to tanker and cargo ship malfunctions through a change in the existing marine tanker route along the Victoria water front away from Oak Bay Island and Trial Islands Ecological Reserves. We do not understand the status quo and why a realignment of shipping routes requiring ALL cargo ships and tankers to enter and exit further off shore would not be better, in keeping with the Ocean's Act precautionary and safest option. We seek information on why a change in the route related to point F, referred to as the Brotchie Pilot Boarding area, is needed as it appears to force large ships to make 3 course corrections for both incoming and outgoing ships. We presume this is for the convenience of the Government of Canada Coast Guard to facilitate "dropping of pilots" at Brotchie Ledge (Location F in the maps below) nearer (Ogden Point). If two course corrections were adopted then ALL tankers would remain further off shore. It is our understanding that in reading TMX reports on rudder malfunctions, even with escort tugs, there are less than a dozen minutes to avoid a grounding when within a kilometer of shore or avoid a collision if near another ship. The further off shore a tanker or other cargo ships is routed, the great the time afforded to take</p>	<p>1.1 Response [TC]: Existing vessel traffic is required to follow the traffic separation scheme, established to ensure the safe passage of all vessels in the Salish Sea. The location of pilot boarding and disembarkation was chosen principally for the safety of the pilots and proximity to pilot vessel mooring locations. As noted in Finding 18 of the TERMPOL report (C353-4-3 - TMEP TERMPOL Report December 11 2014 - A4F8Z4), the TERMPOL Review Committee supports an extension of the pilot disembarkation station and tethered tug escort requirements for Project tankers to an Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 2 area in the vicinity of Race Rocks, weather permitting and subject to the requirements identified in a Pacific Pilotage Authority 'Notice to Industry'.</p> <p>1.2-1.3 Response [TC] to 1.2 -1.3: Trans Mountain conducted a risk assessment that included the probability of a grounding event occurring along the existing shipping route. Trans Mountain committed to mitigation measures to address the increased risks associated with the project. Please refer to the TERMPOL report for further information (C353-4-3 -</p>	<p>This is not an adequate answer the question asked was not addressed.</p> <p>Rationale. The Board of FER fully supports safety for marine pilots and appreciates the extension of the pilot dis-embarkment zone to beyond Race Rocks. We are however concerned with the clause "<i>weather permitting</i>" in the referenced recommendations.</p> <p><i>Finding 18: The TRC supports extending the pilot disembarkation zone and tethered tug escort requirements for Project tankers to an area in the vicinity of Race Rocks, weather permitting and subject to the requirements identified in a Pacific Pilotage Authority 'Notice to Industry'. (3.2.4 Proposed Risk Mitigation Measures).</i></p> <p>Does this mean pilots, under good weather conditions, light winds and low waves, will board in-coming tankers at Race Rock and</p>	<p>It is Transport Canada's position that the responses previously provided to the IR in questions 1.1 to 1.3 are complete and have been appropriately answered.</p>	<p>We feel obligated to register our disappointment with the inability of the Transport Canada to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER requested information on why the tanker route cannot be moved and no rationale has been provided why the shipping routes that most closely follow the shore are lower risk when an alternative off shore routes. We consider this a reasonable in-scope request.</p> <p>Since NEB and other intervenor's need to continue to work with G of Canada we hope to</p>

¹ In this column, insert the relevant text of the IR that was asked. If the entire question is relevant to your submission, insert the full text. The references and preambles can be omitted (removed), unless they are essential to your submission.

² In this column, insert the relevant text of the responding intervenor's response to the IR. If the entire response is relevant to your submission, insert the full text.

³ In this column, explain why you consider the IR response to be inadequate.

⁴ In this column, include the responding intervenor's response to your motion.

⁵ In this column, you may only reply if the responding intervenor has filed a response to your motion, and your reply may only deal with matters raised by the responding intervenor in its response.

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	<p>corrective action in the event of malfunctions or human error. Finally if the shipping routes were straightened out, it is possible to provide greater separation within Canadian waters between incoming and outgoing.</p> <p>See maps below.</p> 	<p>TMEP TERMPOL Report December 11 2014 - A4F8Z4).</p>	<p>dis-embark laden tankers at Race Rocks only when there fair weather? Are pilots not most needed to avoid collisions and grounds and help avoid an oil spill during poor weather conditions, fog, wind and high waves?</p> <p>In our second review of the TERMPOL report we could find no assessment of the current shipping lanes.</p> <p>Is a change in shipping lanes not a Risk Mitigation Measure?</p> <p>If pilots are now going to be picked up and dropped off near Race Rocks the need for pilots to get delivered to Brotchie Ledge near their mooring is unnecessary.</p> <p>What is troubling with this response is that there was no indication that in light of 300% increase in tankers as well as the general and gradual increase in all shipping , that there was no assessment of the current route and as a risk mitigation strategy and no acknowledgement that the Board of FER. may have made a worthwhile mitigation suggestion to lower spill risks.</p> <p>The Board of FER continues to seek some level of commitment to the current shipping routes as a risk reduction strategy. This is within scope of the KM-TMX issues which mention both management of cumulative effects and marine oils.</p> <p>We find the answer inadequate as the question of a change in shipping routes was not answered by a response about pilot boarding and disembarkation.</p> <p>The answer provided does clarify the Brotchie Ledge route is for the convenience of pilots (fuel and travel time savings).</p> <p>We do not see how this route in in keeping with the direction in the Oceans Act as set by</p>		<p>continue this dialogue through the NEB process with TC to provide the needed insight on the current tanker route..</p> <p>The person responsible for approving the boiler plate responses is Gian Aitchison. Senior Environmental Officer, Environmental Services</p> <p>Transport Canada / Government of Canada</p> <p>gina.aitchison@tc.gc.ca / Tel: 604-666-1741 / Cel: 604-809-5146</p> <p>This contact information is supplied should the NEB agree to following-up on the incomplete dialogue begun by Board of FER with TC aimed to reduce environmental and public risk associated with near shore tanker routing along the Victoria waterfront.</p> <p>In the longer term Board of FER looks forward to working with staff TC</p>

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	 <p>A 2015 image of an Oil Tanker and Escort Tug off Oak Bay Islands Ecological Reserves is included to show the proximity of the route to the Ecological Reserve.</p> <p>Information request 1. A request to Transport Canada</p> <p>1.1. Are the longer tanker routes for incoming and outgoing shipping (routes that more closely parallel the Victoria water front and bring all shipping closer to Trial, Oak Bay and Race Rocks Ecological Reserves) principally for the convenience of pilot drop off at Brotchie Ledge?</p> <p>1.2. How and when will the current tanker route be reassessed from a safety and risk of groundings</p>		<p>parliament. We could find nothing in the Oceans Act that states pilot convenience trumps protection of marine resources. Hence we conclude that the policies of the Transport Ministry may contravene parliamentary intent and place at higher risk the marine ecosystems than parliament and the Oceans Act intended.</p> <p>We also understand this would be a change in all shipping but fail to see why this is not in the public interest.</p> <p>The Board of FER hopes the NEB supports a route change as a within scope as a low cost risk mitigation with huge benefits and that the shipping change needs to be in place before any potential increase in oil tanker traffic from Westridge and the KM-TMX project.. We would hope that KM-TMX too would support this modest change in shipping lanes which shortens the distance for all ships.</p>		

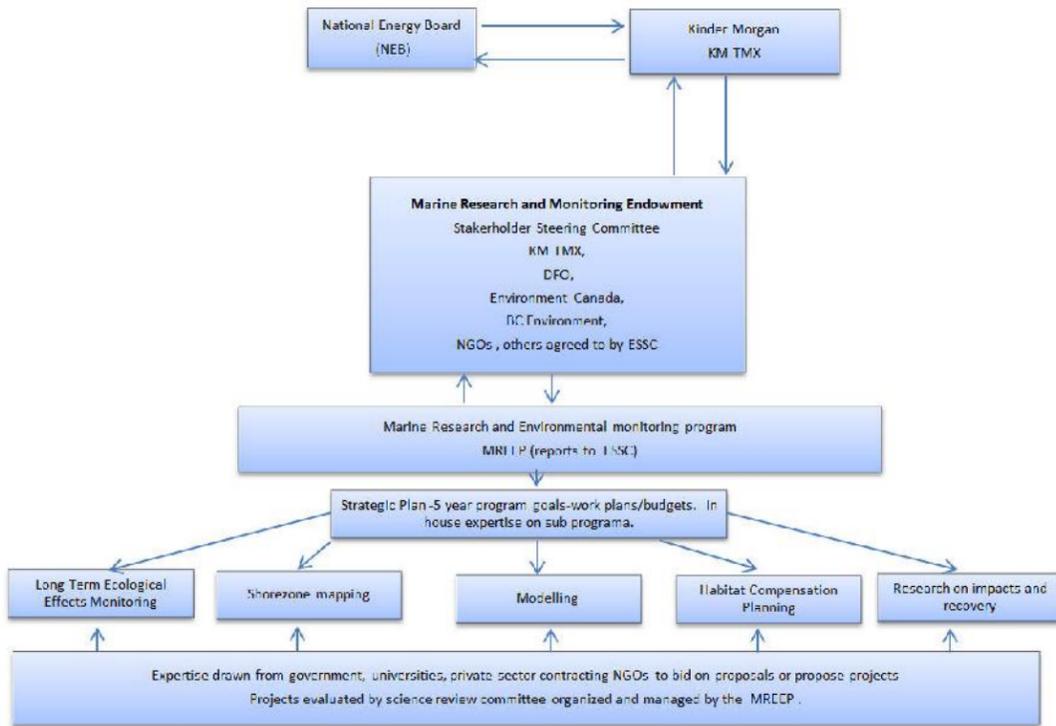
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	<p>perspective? If there is a strong rationale that supports improved safety and it is found that there is lower risk afforded by moving shipping routes further off shore, when can the safer and further off shore and shorter tanker route be implemented?</p> <p>1.3 How is the current shipping route consistent with the Ocean Act "precautionary approach" to the marine environment since there are three course corrections needed by all cargo ships and tankers and this brings all shipping nearer to the Trial Island, Oak Bay Islands and Race Rocks Ecological Reserves as well as the Victoria waterfront?</p>				
2	<p>Preamble: (A request to Natural Resources Canada (NRCan) Natural Resources Canada in their IR1 identified in an appendix a Cabinet Directive. (https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2451199/2786712/C249-9-2_-_NRCan_Written_Evidence_ANNEX_A-K_27May15_-_A4Q0V3.pdf?nodeid=2786907&vernum=-2). This directive includes direction on monitoring and states on page 6 "On going monitoring, including the establishment of baseline monitoring for the regulatory system."</p> <p>It is also noted that NRCan states that under the Major Projects Management Office. "The Minister of Natural Resources has established a Major Projects Management Office within the Department of Natural Resources. The objectives of the Office are to improve public oversight of the regulatory system for major resource projects by enhancing transparency and monitoring; and its public accountability through the use of timelines and other service standards."</p> <p>It is encouraging that baseline monitoring for the regulatory system is identified as needs as is transparency and that this is Cabinet direction to NRCan. NRCan in the IR to KM- TMX also identified the need for baseline monitoring. Our interpretation of this direction to NRCan is that NEB can, in good faith, place conditions on KM-TMX that require longer term monitoring as a permit condition as was done for the Northern Gateway permit and this is consistent with these directives.</p> <p>The Board of Friends of Ecological Reserves (FER) has been seeking pre-spill baseline monitoring for the marine ecosystems along the tanker route as a permit condition for KM-TMX. The need for pre-spill baseline information was informed by the Exxon Valdez spill and the post spill monitoring programs and regret over the lack of pre-spill data. The Board of FER has proposed to the NEB a pre-spill fund (Endowment) supported by KM-TMX with a Trustee Council to guide longer term monitoring. This industry-government-stakeholder Trustee Council would provide oversight to ensure there is sufficient baseline data consistently collected over the life of the KM-TMX project. Such a structure appears to be consistent with the NRCan mandate, Cabinet Directive and enhancing transparency and consistency for monitoring information and afford public accountability.</p> <p>The structure and outline of the Endowment and multi-agency oversight Trustees is included in the Board of FER Final Evidence report and the flowchart for reporting is included here. (https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450919/2786560/C33-6-1_-_Friends_of_Ecological_Reserves_Evidence_KM_TMX_for_NEB_Report-A4Q2T7.pdf?nodeid=2786371&vernum=-2).</p>	<p>2.1 Response [NR Can, EC]: NR Can does not conduct any baseline environmental monitoring of marine ecosystems of the Pacific Coast along the tanker route as this is outside the scope of NR Can's mandate under the "Public Safety Geoscience Program".</p> <p>2.2 Response [NR Can, EC]: NR Can makes use of some ocean current and turbidity monitoring in the Strait of Georgia through Ocean Networks Canada (ONC)'s VENUS observatory (Victoria Experimental Network Under the Sea) at the University of Victoria in British Columbia. ONC is the observatory operator and maintains the data archive. This data is made available to the public through their website. http://www.oceannetworks.ca/</p> <p>2.3 Response [NRCan-MPMO]: Natural Resources Canada's Major Projects Management Office (MPMO) is open to meeting with stakeholders to discuss potential improvements to the regulatory system for major projects. However, this question is outside the scope of the List of Issues for the Project and is not relevant to the Panel's decision making process.</p>	<p>2.1. Thanks for clarifying that NR Can does not collect or monitor marine ecosystem information. This is an acceptable answer. In a review of the NRCan mandate we do note that NRCan does have responsibilities for marine water as it is responsible for the Arctic Waters Pollution Prevention Act and the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act so the mandate is somewhat broader than the Public Safety Geoscience program. We accept NRCan in the Pacific Region has been given no specific tasks on marine environmental management.</p> <p>2.2 This response is inadequate but acceptable.</p> <p>Comment: We are no closer to learning what NRCan does monitor and have read statements that NRCan will undertake monitoring and is committed to transparency.</p> <p>2.3 Not an adequate response . Rational: This request is incorrectly classified as out of scope. The Board of FER would like to meet with NRCan. to discuss regulatory improvements for major project like KM-TMX. The KM-TMX is a major project and the Board of FER has provided constructive improvement on its regulation. This improvement is not out of scope and cite Issues 4, 5 and 11 from the NEB TMX project 4. <i>The potential environmental and socio-economic effects of the proposed project,</i></p>	<p>2.3 It is NRCan's position that the response previously provided to the IR in question is complete and has been appropriately answered.</p>	<p>We feel obligated to register our disappointment with the inability of the Natural Resources Canada to be forthright in their response to our legitimate questions with a boilerplate answer.</p> <p>This does not meet the test of transparency set by NRCan for itself.</p> <p>The Board of FER trusts that the NEB will seek clarification from NR Can as the Board of FER could not achieve this.</p> <p>The person in NR Can who approved the boiler plate response is:</p> <p>Aruna Rajulu Strategic Projects Secretariat Major Projects Management Office</p> <p>Natural Resources Canada/ Tel: 613-697-9198</p> <p>aruna.rajulu@nrcan.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff NR Canada.</p>

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	 <p>Information request 2 for Natural Resources Canada.</p> <p>2.1 What baseline environmental monitoring and inventory does NRCan currently conduct in the marine ecosystems of Pacific Coast along the tanker route that would inform pre-spill environmental conditions?</p> <p>2.2 If NRCan does collect marine monitoring information, what type of data is collected and where and how can it be accessed by Canadians? For NRCan maintained marine monitoring data, please provide links to data custodians, protocols and standards and the data warehouse where data can be accessed.</p> <p>2.3 Does NRCan support a multi-agency-stakeholder approach to governance of major projects as a means to meet Cabinet Directives for monitoring and transparency along the lines proposed by Board of Friends of Ecological Reserves to the NEB?</p>		<p><i>including any cumulative environmental effects that are likely to result from the project,</i></p> <p><i>5The potential environmental and socio-economic effects of marine shipping activities that would result from the proposed Project, including the potential effects of accidents or malfunctions that may occur.</i></p> <p><i>11. Contingency planning for spills, accidents or malfunctions, during construction and operation of the project.</i></p>		
3	<p>Preamble: Information request for Environment Canada (EC) Environment Canada (EC) in an information request to KM-TMX sought from KM-TMX all records of past consultation activities with Environment Canada (i.e. meeting minutes). Here is that request. Environment Canada 2.023 Page 58. SPECIES AT RISK, MIGRATORY BIRDS AND WETLANDS</p> <p>Environment Canada Request: <i>EC requests that the Proponent file all records of past consultation activities with Environment Canada (i.e. meeting minutes).</i></p> <p>KM TMX Response:</p>	<p>Response [EC]: The requested meeting notes are Exhibits B310-5 to B310-11 and are available at: B310-5 - Trans_Mountain_Response_to_GoC_EC_IR_No._2.0 23-Attachment_1 - A4H6A8 B310-6 - Trans_Mountain_Response_to_GoC_EC_IR_No._2.0 23-Attachment_2 - A4H6A B310-7 - Trans_Mountain_Response_to_GoC_EC_IR_No._2.0 23-Attachment_3 - A4H6C0 B310-8 -</p>	<p>This is an acceptable answer.</p> <p>Comments: Thanks for providing a reference that can be used to find the documents. We have studied the minutes and seek some up dates on the marine Birds held Oct 23 2014. <i>Environment Canada suggested that Kinder Morgan consider a fellowship at one of the universities e.g., the Centre of Wildlife Ecology at SFU or other initiatives at UBC.</i></p>		

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	<p><i>Please find attached seven sets of meeting notes; six attachments related to the list requested in this IR and one attachment providing the meeting minutes for a conference call between Trans Mountain Pipeline ULC (Trans Mountain) and Environment Canada on December 16, 2014 about Trans Mountain providing support to Environment Canada's collection of baseline data on marine birds.</i></p> <ul style="list-style-type: none"> • GoC EC IR No. 2.023 - Attachment 1 (EC TMEP Meeting Notes April 17 2013) • GoC EC IR No. 2.023 - Attachment 2 (EC TMEP Meeting Notes May 24 2013) • GoC EC IR No. 2.023 - Attachment 3 (EC TMEP Meeting Notes July 3 2014) • GoC EC IR No. 2.023 - Attachment 4 (EC TMEP Meeting Notes Oct 10 2014) • GoC EC IR No. 2.023 - Attachment 5 (EC TMEP Meeting Notes Oct 22 2013) • GoC EC IR No. 2.023 - Attachment 6 (EC TMEP Meeting Notes Oct 23 2014) • GoC EC IR No. 2.023 - Attachment 7 (EC TMEP Meeting Notes Dec 16 2014) <p>These attachments could not be found on the KM-TMX web site. Board of FER believes these meeting notes are important to the process and should be available to all intervenors.</p> <p>IR 3. Please provide to the Board of FER, minutes of meetings between Environment Canada and KM-TMX. Ideally these should be made available on the NEB web site for other intervenors.</p>	<p>Trans_Mountain_Response_to_GoC_EC_IR_No._2.023-Attachment_4 - A4H6C1 Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 6 B310-9 - Trans_Mountain_Response_to_GoC_EC_IR_No._2.023-Attachment_5 - A4H6C2 B310-10 - Trans_Mountain_Response_to_GoC_EC_IR_No._2.023-Attachment_6 - A4H6C3 B310-11 - Trans_Mountain_Response_to_GoC_EC_IR_No._2.023-Attachment_7 - A4H6C4</p>	<p>• The Board of FER interprets this EC request as an acknowledgement that KM-TMX has a large responsibility due to the risk their project-brings. EC suggested the fellowship as an appropriate response for KM-TMX and the collective industry/government/NGO need to increase understanding of marine birds. The Board of FER seeks similar obligations of KM-TMX but not as a fellowship but through a KM-TMX endowment fund which would in our view better address priority monitoring and research gaps including marine birds. The problem of a KM-TMX funded fellowship is that the recipient would not be sufficiently independent to provide data that may be perceived to be critical of standard operating procedures. The Board of FER concludes that EC staff support of the need for more science based information and that KM-TMX has a significant role to play and there is a need for independent credible science on marine ecosystems. We appreciate that KM-TMX intends to cast itself as a minor player with only a 7% increase in coastal shipping. The Board of FER cannot support this and believe true disclosure of risk should be linked to % of oil being transported by all shipping and the % that KM-TMX contributes to this. Is there going to be a KM-TMX supported fellowship?</p> <p><i>It was discussed that a Program should include multiple species, that would be multi-seasonal, and that would be applicable-to all projects and marine users, and would focus on identifying environmental sensitivities. <u>There is a great need for baseline data on the abundance and distribution patterns of key marine bird species, in all seasons, and over at least 3 years prior to project initiation.</u></i></p> <p>• The Board of FER totally agrees on the diagnosis that there is a lack of baseline monitoring data and are pleased to see that EC also acknowledges significant baseline monitoring gaps. We encourage EC to look at the Board of FER Endowment proposal being put to NEB as a means to address these deficiencies.</p>		

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			<p>What are the current EC plans for incremental improvement to baseline mentoring</p> <p><i>Environment Canada made it clear that little information is known about marine bird distribution and abundance along the shipping route.</i></p> <p>The Board of FER concurs that a more systematic and long-term monitoring system is needed along the tanker route and it is just such a program we have proposed in our Final Evidence Report as an Endowment with the proposed governance shown in the IR #2.</p> <p><i>Bird Studies Canada is an excellent resource for information and this group works closely with Environment Canada, however, it is mostly volunteers that gather the information</i></p> <p>The Board of FER is a volunteer organization and knows that volunteers are interested in citizen science and increasingly important component of monitoring. We work for operating expenses. There is however a need for some infra structure so there is solid data management, survey protocols and training to optimize the efforts of volunteers and capture monitoring data.</p> <p><i>Margaret (KM- TMX) indicated to Environment Canada that a grant was provided to Bird Studies Canada to increase its assessment and mapping of marine bird distribution and abundance in <u>Burrard Inlet</u>, similar to the work that was done in the Gulf Islands</i></p> <p>It is good to hear KM-TMX has provided a grant to support Bird Studies Canada we note the limitation placed on funding to the Burrard Inlet and we also note the discretionary obligation. The Board of FER notes that KM-TMX has consistently restricted its involvement to Burrard Inlet. The Board of FER understand the NEB review extends the KM-TMX obligations to all Marine waters/ecosystems species along the tanker route. That is why we advocate for an Endowment Fund from KM-TMX to address number of monitoring, modeling and shore-zone inventory. We see oversight by Environment Canada and</p>		

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			<p>KM-TMX on long term research and monitoring and management of an Endowment..</p> <p><i>The primary focus of a Marine Bird Monitoring Program would be to have a good understanding of species abundance and distribution over multiple years and seasons so that if a spill occurs there is a baseline for pre-existing conditions</i></p> <p>The Board of FER totally supports the need for baseline monitoring and is pleased to see the EC both understands the need and acknowledges the gap. We hope that EC will fully support the Board of FER permit condition being sought as a condition for approval. This is a 30+ year project and monitoring needs and new research will be needed to guide environmental management and understand potential recovery.</p> <p><i>Concerns were raised about the recent freighter near Haida Gwaii, which had a near miss and how there was <u>little to no baseline information</u> on marine birds for that area.</i></p> <p>The Board of FER shares these concerns raised by EC about lack of baseline information and believe this strengthens the the Board of FER call for a program for a long term systematic, pragmatic approach involving regulatory agencies, oil exporters (KM-TMX) and Non government organizations like FER..</p> <p><i>There was some agreement amongst the group that review of the various monitoring options was needed and a prioritization of species, locations and timing would be needed as it wouldn't be economical nor practical to do all facets of monitoring and address all species</i></p> <p>The Board of FER concurs with the need for set priorities but believe that a long term monitoring program needs to set in place with multi stakeholders EC KM-TMX and NGOs such as Board of FER.</p> <p><i>Next Steps. Trans Mountain will explore potential partnerships with other marine users, Bird Studies Canada and postsecondary institutions on a</i></p>		

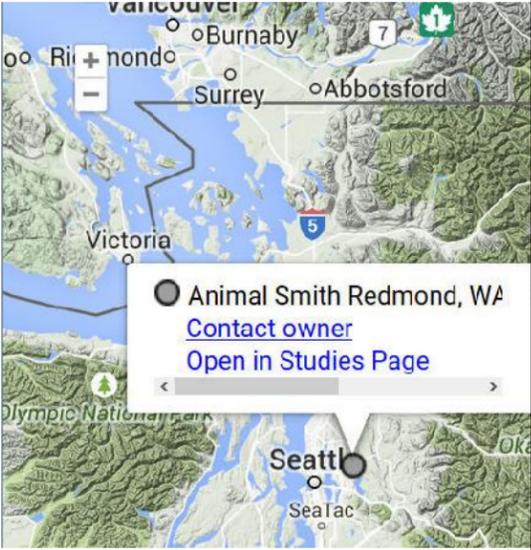
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			<p><i>Marine Bird Monitoring Program.</i> Does EC know who KM-TMX is in negotiations with to form partnerships and what would the EC role be in these partnership arrangements?</p>		
4	<p>Preamble: Information request for Environment Canada (EC) The above meetings (IR-3) focused on terrestrial wetland systems and species at risk and not on species listed in marine environments listed by COSEWIC or under the SARA. We do note there was considerable dialogue between EC and KM-TMX on other terrestrial species too. The Board of FER listed all species at risk for marine Ecological Reserves but we are unclear about the EC activities on these species and their recovery plans. For an ER-specific listed species, see the Board of FER final written evidence filing https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450919/2786560/C33-6-1_-_Friends_of_Ecological_Reserves_Evidence_KM_TMX_for_NEB_Report-A4Q2T7.pdf?nodeid=2786371&vernum=-2</p> <p>A request to Environment Canada</p> <p>4.1 What baseline environmental monitoring and inventory does EC currently conduct in the marine ecosystems of Pacific Coast along the tanker route that would inform pre-spill environmental condition?</p> <p>4.2 If EC does collect marine monitoring information, what type of data is collected and where and how can it be accessed by Canadians? For EC-maintained monitoring data please provide links to data custodians, protocols and standards and where data can be accessed.</p> <p>4.3 Does EC have responsibility for COSEWIC and SARA listed species and recovery plans being implemented in the marine environments along the tanker route and for species that may be impacted by an oil spill?</p> <p>4.4 We request summaries of meetings between EC-Canada and KM-TMX on marine species recovery plans for SARA and any decisions on monitoring, practices and research that have been made by either party or/and KM-TMX of EC that resulted from such meeting?</p>	<p>Response [EC] for 4.1-4.2: EC-CWS (Canadian Wildlife Service) Programs EC-CWS (Canadian Wildlife Service) implements a number of programs and initiatives in marine ecosystems along the Pacific Coast. These primarily relate to migratory birds. Current monitoring activities focus on tracking populations (e.g. generating population estimates, identifying bird use of important habitats or generating population trend estimates for migratory bird species and some SARA-listed Migratory Birds). In the past, EC-CWS was also engaged in migratory bird inventory work and the results of past regional migratory bird inventories are available in CWS technical reports. Because of our mandate on migratory bird populations, EC-CWS, generally speaking, does not Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 7 currently engage in broad monitoring activities that evaluate 'baseline state' of specific marine habitats or ecosystems. The following is a list of EC-CWS current monitoring activities or programs undertaken along the tanker route:</p> <ul style="list-style-type: none"> • Pelagic Marine Bird Monitoring Program: Trained observers (staff or contractors) are placed on 'ships-of-opportunity' traversing the pelagic waters of the Canadian Pacific Exclusive Economic Zone, and collect pelagic bird data according to an established protocol. All data are entered into the 'Pacific Seabird Database'. • Estuary and nearshore surveys: Estuary and nearshore surveys of waterbirds and waterfowl have been conducted from the ground and from the air (float plane) in portions of the tanker route in parts of Georgia Basin to capture midwinter and early spring (January to March) distribution and abundance of waterfowl and waterbirds. • Shorebird Migration Surveys: Roberts Bank Shorebird Counts - conducted during northward migration (focal species: Western Sandpiper and Dunlin) Sidney Island Shorebird Counts - conducted during southern migration (focal species: Western 	<p>4.1 -4.2 This is an acceptable response however Board of FER has concerns with how EC is meeting its statutory obligations for migratory birds. Here are a few of the concern based on a cursory overview. We believe that EC needs to do indicator level monitoring or be involved with a governance model such as that proposed by Board of FER to do that. A brief review of the Pelagic Monitoring raises concerns. The Pacific Seabird Data was reviewed. While it is good to hear that EC is tracking migratory birds the data base is managed by the US and we only see Alaska and Oregon listed as access points. The absence of anything from BC and Washington indicates these two jurisdictions are less active or not maintaining data bases that are accessible to the public. http://alaska.usgs.gov/science/biology/nppsd/index.php/ 'or http://jollyroger.science.oregonstate.edu/metadata/http/PNCERS/PacificSeabird.html . This implies to Board of FER that EC is a rider on a US maintained systems and relying on others along the tanker route in the Salish Sea. This strengthens our view that a coordinated government, industry NGO monitoring program is needed on the Pacific Coast for the tanker route.. Estuary and near shore surveys. Is this data available? How long has it been collected? No reference was provided on access. Estuary and nearshore surveys No link was provided to the data and a web search found no recent data. Is there a data link to recent surveys? Shorebird Migration Surveys. No references were provided so it is not possible to test the veracity of the data and the strength of the data to provide baseline information for pre and post spill assessments and report on ecosystem and species recovery.</p>		

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		<p>Sandpiper and Least Sandpiper) Identification of marine bird sensitivities under the World Class Tanker Safety System (EC-CWS): As a component of the World Class Tanker Safety System initiative (Phase 1a - focused on the mid- and north coast regions, Phase 2 – focusing on the Salish Sea and waters off western Vancouver Island), EC-CWS has been resourced to collect additional marine bird data. We are using these additional resources to collect two basic types of data:</p> <ul style="list-style-type: none"> • Under both Phase 1a and Phase 2, a suite of remote tracking studies (i.e. via geolocation archival [GLS], global positioning system [GPS] and platform terminal transmitters [PTT, or simply satellite] tags) designed to link baseline marine survey data with potential impacts of an oil spill event to regional populations of focal marine bird species, through tracking spatial-temporal movement patterns of birds captured and tagged on the water or at important local breeding colonies. Although many of the marine bird tagging programs have not taken place in areas adjacent to the TMX proposed tanker route, marine Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 8 birds tagged elsewhere in BC waters may move through or utilize the region, so any of these projects have the potential to generate relevant data. • Under Phase 2 only, an additional suite of marine bird survey and inventory activities, targeting priority bird groups or areas of aggregation within the region. Most of these survey activities are concentrated in the fall and winter periods when marine bird abundance and species diversity are highest. Data from the World Class Tanker Safety System is processed and stored in a number of ways: <ul style="list-style-type: none"> • Satellite telemetry data are regularly uploaded to Movebank, a free, online database of animal tracking data https://www.movebank.org • Other tagging data (i.e. data from retrieved geolocator and GPS data-loggers) are currently being collected, processed, and integrated into spatial modelling products. • Occurrence data or other products generated by marine bird monitoring activities funded under WCTS Phase 2 will be stored, either in existing databases or in new databases, as appropriate. Government of 	<p>We are pleased to hear EC has been resourced to collect additional data. We are unclear of the resources and the duration of this funding. What Board of FER is proposing is an Endowment sufficient to monitoring marine species and ecosystems over the life of the KM-TMX project.</p> <p>Appreciate the link to Movebank a global apparently voluntary data entry system. A look at the Salish Sea shows there is very light on data</p>  <p>Finally we thank the staff of EC for clarifying there are a variety of sources of data. The Board of FER is encouraged by the array of data sources but this brief over by EC more strongly supports the need for a coherent approach to monitoring to pull together the current ad hoc information and craft an efficient cross sectoral approach.</p> <p>We hope both EC and NEB will endorse the long term monitoring and marine research permit condition proposed by the Board of FER . We see EC understands the need for long term independent and stable funded program as the solution to advance marine ecosystem through pre</p>		

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		<p>Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 9 COSEWIC-listed and SARA-listed species that occur along the tanker route that are monitored by EC-CWS: Table 1. COSEWIC-listed and SARA-listed species that occur along the tanker route that are monitored by EC-CWS. The surveys are described above. Please note this list may not be exhaustive. Species of Interest COSEWIC Status SARA Status Survey Type of Data Albatross, Short-tailed Threatened Threatened Pelagic Presence/absence Murrelet, Marbled Threatened Threatened Pelagic Presence/absence Shearwater, Pink-footed Threatened Threatened Pelagic Presence/absence; atsea density estimates Auklet, Cassin's Special Concern No Status Pelagic; WCTSS* Geo-locator tracking; at-sea density estimates; at-sea presence/absence Grebe, Horned Special Concern No Status Estuary, nearshore Presence/absence Grebe, Western Special Concern No Status Estuary, nearshore Presence/absence Murrelet, Ancient Special Concern Special Concern Pelagic; WCTSS* Geo-locator tracking; at-sea density estimates Phalarope, Red-necked Special Concern No status Pelagic Presence/absence *WCTSS = World Class Tanker Safety System – remote tracking studies Data access to EC-CWS monitoring information: EC-CWS is in the process of uploading data that is validated and checked for sensitivities from EC-CWS monitoring activities or programs, to the Open Data Portal, Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 10 which will provide full access to data for Canadians (http://open.canada.ca/data/en/dataset). Before making the data available to the public, all datasets must be entered and verified for accuracy and limitations under data sharing agreements. The verification of data necessitates a delay in release of data that, depending on the complexity of the data, could be one or more years. Data available publicly, via the Open Data Portal will therefore be at least a year old. Information regarding data custodians, protocols, and standards (and any other metadata) will be included with the metadata that will accompany any dataset available online. EC-Science and Technology (S&T) Programs Species-specific long-term monitoring programs (EC-S&T): EC-S&T</p>	<p>and post oil spill monitoring.</p>		

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		<p>branch conducts the following long-term monitoring on marine bird populations:</p> <ul style="list-style-type: none"> • Harlequin duck surveys between White Rock and Crescent Beach from 1994- present (bird counts) • Wrangel Island Snow Geese surveys on the Fraser River Delta (1987-present) and Skagit River deltas (1992-present) o Note the State of Washington has taken over this monitoring in the last 2 years • Black brant spring migration counts at Parksville-Qualicum Beach from 1989- present (abdominal profiles since 1999) Long-term monitoring of contaminants in eggs of Pacific seabirds (EC-S&T): • Eggs of three colonial seabird species (Leach's storm petrel, double-crested cormorant, rhinoceros auklet) are collected from coastal colonies (including within the Strait of Georgia for cormorants), every four years for analysis of legacy persistent organic pollutants, flame retardants, perfluorinated compounds and mercury (1985 to present). • Eggs of glaucous-winged gulls are collected annually at two islands in the Strait of Georgia as part of the Chemicals Management Plan Monitoring and Surveillance Program. Eggs are analyzed for emerging and priority compounds (2008 to present). It is expected that the above EC-S&T studies will be published in peer-reviewed research articles in the next few years; many have already resulted in publications. Once a study is published, any associated datasets or other metadata (e.g. protocols and standards) not included in the published article may be accessed by the public by Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 11 contacting the author of the article (contact information is generally included with the article). Egg contaminants data from the Chemicals Management Plan Monitoring and Surveillance Program is in the process of being posted on EC's Open Data Portal (http://open.canada.ca/data/en/dataset). Information regarding data custodians, protocols, and standards (and any other metadata) will be included with the metadata that will accompany any dataset available online. Long-term programs coordinated and implemented by EC-CWS partner Bird Studies Canada The following long-term programs, coordinated and implemented by EC-CWS partner 			

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		<p>Birds Studies Canada, also collect data relevant to monitoring marine birds: • British Columbia Coastal Waterbird Survey http://www.bsceoc.org/volunteer/bccws/) This survey is a citizen-science initiative wherein volunteers conduct monthly bird counts throughout BC's coastal shorelines. The survey is coordinated by Bird Studies Canada, and funded through multi-year Grants and Contributions from the Canadian Wildlife Service, Environment Canada. • British Columbia Beached Birds Survey http://www.bsceoc.org/volunteer/bcbeachbird/) o This survey collects "baseline information on the causes and rates of seabird mortality. This program relies on volunteers who conduct monthly beach walks, looking for seabird carcasses that have washed up onshore." Please contact Bird Studies Canada for more information regarding these programs: • Phone: 1-877-349-2473 • Email: bcprograms@birdscanada.org</p> <p>4.3 Response [EC]: In the marine environments along the tanker route, EC has responsibilities under the Species at Risk Act (SARA) for marine migratory bird species at risk. Aquatic species at Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 12 risk are the responsibility of Fisheries and Oceans Canada. The marine bird species at risk that have the potential to be impacted by the Project are listed in Table 2-4 of EC's Written Evidence (Exhibit C121-3-1, starting on PDF page 66). Additionally, EC notes that there are several terrestrial species located along shorelines within the Marine Project Area, for which critical habitat has been identified (Exhibit C121-3-1, PDF page 35). These habitats have the potential to be impacted by a marine oil spill. For terrestrial species, EC has responsibilities under SARA for those individuals of a wildlife species that are not located in or on lands administered by Parks Canada Agency. As described in EC's Written Evidence (Exhibit C121-3-1, PDF page 10), EC has responsibilities under SARA regarding recovery planning, protection, permitting, and other activities identified within the legislation. EC has responsibilities regarding the preparation of recovery plans (recovery strategies, action plans, and</p>			

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		<p>management plans); however, it is recognized that successful implementation of recovery plans depends on the commitment and cooperation of many different constituencies and stakeholders and cannot be achieved by EC or another jurisdiction alone. For terrestrial species that are not a migratory bird, and which do not occur on federal land, the provinces and territories carry considerable responsibility for recovery of species at risk within their jurisdiction. Based on the best available information, SARA requires an identification of critical habitat for Threatened, Endangered, and Extirpated species to the extent possible in a recovery strategy or action plan. Once critical habitat is identified in a final recovery strategy or action plan, SARA sets out a process to evaluate existing protection mechanisms, and if necessary, to put in place additional protection under SARA. EC focused its species at risk review and recommendations on those species for which there is a greater level of concern with respect to potential adverse impacts from the Project, including species for which critical habitat has been identified in areas overlapping with the Project. Marine bird species currently do not have marine critical habitat identified; however, work is underway to develop marine critical habitat for marine bird species, and marine critical habitat will be posted on the SAR Public Registry once available as an amendment to or part of a recovery strategy or action plan. Although COSEWIC is created by legislation (SARA S.14), species assessed as at risk by COSEWIC are not automatically protected under SARA. Once the Governor in Council decides to list a species under SARA, then EC has responsibilities regarding the species. However, EC generally recommends that COSEWIC-listed species be included in the assessment of project effects as a best management practice in advance of the species being considered for listing under the SARA in the future. Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 13 In addition to responsibilities for marine bird species protected under SARA, EC is responsible for enforcing the prohibitions of the Migratory Birds Convention Act, 1994 (MBCA) for all migratory birds. These prohibitions are described in EC's Written Evidence (Exhibit C121-3-1, PDF page 37),</p>			

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		<p>and include the prohibition of the deposition of a substance that is harmful to migratory birds in waters or an area frequented by migratory birds or in a place from which the substance may enter such waters or such an area (see Section 5.1 of the MBCA).</p> <p>4.4 Response [EC]: While meetings were held between EC and the Proponent regarding marine bird baseline and monitoring, and species at risk were discussed as part of a broader discussion on marine birds within the Marine Project Area, no meetings were held that specifically targeted marine bird species or their Species at Risk Act (SARA) recovery plans. Refer to EC's response to IR3 for the location of minutes of meetings between EC and the Proponent. Refer to EC's response to IR 4.3 above for information regarding EC's responsibilities under SARA and a discussion of the focus of EC's analysis and recommendations for species at risk in EC's Written Evidence (Exhibit C-121-3). EC's recommendations on the collection of marine bird baseline data were not developed in consultation with the Proponent. Rather, EC developed the recommendations. The recommendations follow a multi-species approach rather than focusing on single species for two reasons (the approach was noted in Meeting Minutes from Oct. 2014, Exhibit B310-11, PDF page 1). First, many marine bird species, including, but not limited to species at risk, have specific vulnerabilities to oil spills. Second, with respect to baseline and monitoring activities, EC views a multi-species approach as more effective at describing species composition and their spatial and temporal abundance patterns within the Project Marine Area. Consequently, a multispecies approach will be more effective at identifying high consequence areas/habitats in the event of an oil spill. Species of conservation concern can be especially vulnerable to oil spills in the marine environment because their populations are subject to other ongoing threats. However, EC highlights that bird species found in much greater Government of Canada Responses to Board of Friends of Ecological Reserves Information Requests Page 14 numbers are similarly important (as noted in Meeting Minutes from Dec. 2014, Exhibit B310-10, PDF page 2). High consequence areas</p>			

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		<p>would need to be considered in order to effectively prioritize cleanup sites and direct management actions to locations that will have the most impact; inform the development of recovery initiatives; determine the types and levels of compensation measures; and, allow for an evaluation of recovery success in the event of a spill. The main role of emergency response and recovery measures is to mitigate, to the greatest extent possible, impacts to marine birds in the event of an oil spill. Given that such measures would be most effective at reducing impacts to marine birds when planned on the basis of high consequence areas, no specific recommendations on species of conservation concern were deemed essential.</p>			
5	<p>Preamble. Information Request for Environment Canada (EC) Page 230 GOC IR 1 request states from EC to KM-TMX. Emphasis added by Board of FER.</p> <p><i>While Environment Canada recognizes that some of the details of this plan may be determined post-environmental assessment, a detailed outline of the plan, including the main points highlighted below, should be provided as part of this environmental assessment review. The stated objectives for the baseline monitoring plan should describe and quantify the spatial and temporal abundance and distribution patterns (i.e. for four seasons) of marine and near-shore birds (including seabirds, waterbirds, waterfowl, and shorebirds, where relevant) within the project area, including Burrard Inlet and the Juan de Fuca Strait. Specifically, the activities and programs associated with the baseline to be collected as part of the monitoring plan should:</i></p> <p><i>Specifically, the activities and programs associated with the baseline to be collected as part of the monitoring plan should:</i></p> <p><i>a) Focus on marine bird community use of marine and nearshore (subtidal/intertidal) habitats throughout the project area and identify how those habitat types would be impacted should a spill occur.</i></p> <p><i>b) Ensure that key, sensitive habitats are sampled at such effort to allow an assessment of their use by marine birds. Specifically sampling efforts should include:</i></p> <p><i>i) Aerial and boat-based surveys;</i></p> <p><i>ii) Surveys conducted three years pre-expansion activities, three years post-expansion activities (throughout the annual cycle and consecutive), as well as ongoing monitoring after this period at a reduced intensity; and</i></p> <p><i>iii) Surveys conducted at such a frequency that information on distribution, abundance and habitat use of marine and near-shore species will be obtained during the breeding, wintering, and spring and fall migration seasons. In this respect, Environment Canada recommends a minimum of monthly surveys or a survey frequency that result in a coefficient of variation of ca. 20% for priority species or assemblages (Smith, 1995).</i></p> <p>Board of FER is pleased that EC has identify a longer term KM TMX obligation (permit condition) for increased monitoring.</p> <p>A request to Environment Canada</p> <p>5.1 Please supply the wording and commitments made by KM-TMX of other assurances EC will supply EC</p>	<p>5.1 Response [EC]: EC notes that the Department has received clarification from the Intervenor, Friends of Ecological Reserves, regarding this question. The Intervenor has indicated that it does not believe that 6 years of pre-spill data is sufficient and is unsure if EC is able or willing to continue monitoring after 6 years. EC recommends that the Responsible Authority require that the Proponent develop a marine bird baseline monitoring plan (see Recommendation 2-16, EC Written Evidence, Exhibit C121-3-1, PDF pages 77-80), and that the Proponent work in consultation with EC-CWS, as well as others, as appropriate, during the development and implementation of the plan. The responsibility for the development and implementation of the monitoring plan lies with the Proponent. In EC's Written Evidence (C121-3-1, PDF page 78), EC recommends that the marine bird baseline monitoring plan include surveys conducted 3 years pre- and 3 years post expansion activities, as well as ongoing monitoring after this period; however, EC is not providing this data. Some collaboration between EC and the Proponent has occurred though, as noted by the Proponent in their response to EC IR 2.047 (Exhibit B310-2, PDF page 232): "Trans Mountain has provided support for Environment Canada to expand on the agency's existing program of collecting marine bird data from operating vessels." This pilot project involved placing an observer contracted by EC on a tug that accompanied a tanker to conduct marine bird surveys along the tanker route. EC believes that this approach would be beneficial as one component of the Proponent's</p>	<p>This is an acceptable response.</p> <p>Comment.</p> <p>5.1 The Board of FER continues to maintain the 3 years of bird observations on a project slated for 30+ years is insufficient. We continue to look for a longer term commitment from KM-TMX and endorsement for this.</p> <p>We are unsure that any biologist would agree that 3 years data is sufficient establish credible baseline surveys. Has EC sought an option for the Association of BC Biologists on 3 the adequacy of 3 years of monitoring data to establish baseline conditions?</p>		

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	<p>requested 3 years of pre-expansion monitoring.</p> <p>5.2. Are assurances consistent with the request that EC specified for a monitoring program?</p> <p>5.3. EC has recognized the need for KM-TMX to conduct pre-spill monitoring. Would EC support a sampling program that goes beyond the 6 year-program it has proposed be conducted by KM TMX? Would EC in the 7th year be continuing the program begun by KM-TMX?</p> <p>5.4 Does EC support a multi-agency-stakeholder approach for marine monitoring and transparency funded by an Endowment as outlined in IR 2 and as proposed to NEB as a condition?</p> <p>5.2. Would EC Canada agree to provide management direction toward managing funds and inputs to setting priorities for projects funded through a Marine Endowment Fund for Research and Long-term Monitoring?</p>	<p>overall marine bird baseline monitoring plan. However, the Proponent would be responsible for implementing further monitoring along the tanker route as part of that plan.</p> <p>5.2 Response [EC]: The Proponent's responses regarding EC's information request that the Proponent provide a marine bird baseline monitoring program are outlined in the Trans Mountain Response to GoC EC IR No. 2 (Exhibit B310-2, PDF pages 232-233). In particular, the Proponent indicated that it <i>"is supportive of forming a collaborative partnership to collect data on baseline physiological condition of marine birds with other industry stakeholders operating in Burrard Inlet and along the shipping route. Trans Mountain encourages further consultation with Environment Canada and other industry stakeholders on the structure and scope of such a monitoring program."</i> EC is not aware of an assurance by the Proponent that it will develop or implement a marine bird baseline monitoring plan consistent with the specific requests outlined by EC in the Government of Canada IR No. 2.047 (Exhibit B310-2, PDF pages 229-231), and as further refined in Recommendation 2-16 of EC's Written Evidence (Exhibit C121-3-1, PDF pages 77-80) (e.g. surveys conducted 3 years pre- and post-expansion activities, as well as ongoing monitoring after this period).</p> <p>5.3 Response [EC]: In Recommendation 2-16 of Environment Canada's Written Evidence (Exhibit C121-3-1, PDF pages 77-80), EC recommends that the marine bird baseline monitoring plan include <i>"surveys conducted three (3) years pre- and three (3) years post-expansion activities, (throughout the annual cycle and consecutive), as well as ongoing monitoring after this period at a reduced intensity for a subset of indicators"</i> (emphasis added). The intended approach for the recommended monitoring plan is that the Proponent is responsible for the implementation, including the ongoing monitoring after the three (3) years post-expansion activities. Thus, EC does not intend to continue any monitoring program initiated by the Proponent.</p> <p>5.4 Response [EC]: In general, a collaborative approach to monitoring could involve benefits such as opportunities for sharing of expertise, skills, and resources, as well as enhanced oversight. EC</p>	<p>5.2 We are unconvinced that a biologist observer is sufficient as this data does not tie to long duration shore based monitoring even as Christmas Bird Counts. This is a concern and it unclear that EC has thought this through in the context of shore based surveys such as those linked to sites in Ecological Reserves. The three year duration with no follow-up may make such a data an anomaly and less dependable that longer term monitoring data.</p> <p>The Board of FER sought insight from EC on long term monitoring and EC appears to be content with KM-TMX obligation of three years of bird surveys from vessels.</p> <p>What is the rational for this very limited approach. The monitoring of sea birds and other species continues after the Exxon Valdez spill and the biologist continue to lament the absent of good baseline information. No rational was provided for such short duration and limited monitoring by EC.</p> <p>5.3. A KM-TMX three year program of monitoring is inadequate for establishing credible baselines. To hear that EC does not commit to continuing monitoring beyond 3 years strengthen the Board of FER appreciation that our proposal is superior to that of EC both in duration and in collaboration with multi stake-holders.</p> <p>5.4. The Board of FER appreciates the clarification that a collaborative multi-stakeholder approach</p>		

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		<p>recognizes that a collaborative approach to research has been used in the context of some environmental assessments. In an environmental assessment context, it is understood that monitoring associated with projects would be funded by proponents and endowments can be appropriate in funding long term monitoring.</p> <p>5.5 Response [EC]: EC has an interest in marine research and monitoring related to its mandate. EC could, if capacity allows, provide expert advice on marine bird monitoring and modeling associated with the Project. In general, EC's involvement in trusts or initiatives, such as the one proposed by Friends of Ecological Reserves, would be considered in the context of EC's mandate, capacity, and role; the role of EC employees; and the extent to which the activity would further EC's mandate. EC would not manage funds.</p>	<p>provides benefits to EC too.</p> <p>5.5 Appreciate the understanding that EC has expertise and could provide this to a multi-stakeholder group to steer long term monitoring and research such as that proposed to NEB for a KM-TMX permit condition.</p>		
6	<p>Preamble: EC stated in its IR 1 to KM-TMX the following:</p> <p><i>Use the most appropriate scale/resolution to inform effects and guide studies, in both confined marine and near shore areas;</i></p> <p><i>e) Include data sharing agreements that allow Environment Canada (and other departments and organizations, as deemed appropriate) to access the data collected to further build on:</i></p> <ul style="list-style-type: none"> <i>i) value-added predictive modeling activities already underway;</i> <i>ii) existing emergency response databases;</i> <i>iii) Area Response Planning (ARP) initiatives and products for the Southern BC ARP, as part of a set of federal measures designed to achieve a World Class Marine Tanker Safety System in Canada; and</i> <i>iv) Species at Risk recovery planning, where applicable.</i> <p>Further EC stated on data management:</p> <p>The Board of FER strongly supports the EC request for KM-TMX on data sharing and transparency. The Board of FER in our final written evidence report, does not support industry-only lead modeling as the basis for planning for marine oil spills, quantifying environmental impacts as there is a vested interest in understanding impacts and industry will not self impose on changes to any practices should these increase costs. The Board of FER therefore has proposed that a multi-stakeholder group including industry (such as the Western Marine Resources Corporation) will be needed for a more objective and transparent approach to pre-spill planning and monitoring. The Board of FER recommends that a financial obligation be placed on KM-TMX, as this project brings the highest known risk to the marine ecosystems. The Board of FER requests an Endowment provide funds for modeling, research and monitoring with a multi-stakeholder group of Trustees to set strategic direction. This is proposed so that KM-TMX is not the sole determiner of what is done for setting priorities or selecting modeling approaches for the marine environment over the life of the project. See IR 2 for disclosure on the Board Proposal to NEB. The structure and outline of the Endowment and multi-agency oversight Trustees is included in the Board of FER Final Evidence report and the flowchart for reporting is included here. (https://docs.neb-one.gc.ca/ll-</p>	<p>6.1 Response [EC]: Please see EC's response to IR 5.4.</p> <p>6.2 Response [EC]: Please see EC's response to IR 5.5.</p>	<p>5.4. Acceptable Response. The Board of FER appreciates the clarification that a collaborative multi-stakeholder approach provides benefits to EC too.</p> <p>5.5 Acceptable Response. Appreciate the understanding that EC has expertise and could provide this to a multi-stakeholder group to steer long term monitoring and research such as that proposed to NEB for a KM-TMX permit condition.</p>		

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	<p>eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450919/2786560/C33-6-1 - Friends of Ecological Reserves Evidence KM TMX for NEB Report-A4Q2T7.pdf?nodeid=2786371&vernum=-2).</p> <p>6.1 Does EC support a modeling and monitoring forum guided by a multi-stakeholder Trustee Council such as that proposed by Board of FER?</p> <p>6.2 Would EC Canada provide expertise to participate as a Trustee over the governance and guide strategic directions for monitoring and modeling in the marine environment in the event that NEB establishes conditions for Endowment Funds as proposed by the Board of FER?</p>				
7	<p>Preamble: IR for EC.</p> <p>In a response to EC during the IR-1 round and specific to monitoring, KM-TMX stated they had provided \$50,000 to the Pacific Salmon Foundation and \$27,000 to Bird Studies Canada for work in Burrard Inlet. Board of FER has interpreted this to show that KM-TMX identifies its obligations ending at the Westridge Terminal and before dilbit is loaded on tankers, hence the restrictions on monitoring to only sites adjacent to the Westridge Terminal. The Board of FER interprets the NEB mandate to mean that KM-TMX has long-term (life of the project) marine obligations. This is due to the issues listed by the NEB which are:</p> <ul style="list-style-type: none"> ➤ <i>Issue 4: cumulative environmental effects that are likely to result from the project;</i> ➤ <i>Issue 5: potential environmental and socio-economic effects of marine shipping activities including the potential effects of accidents or malfunctions that may occur;</i> ➤ <i>Issue 11: contingency planning for spills, accidents or malfunctions during operation of the project.</i> <p>The funds provided by KM-TMX are restricted by KM-TMX to projects strictly in Burrard Inlet within sight of the Westridge Terminal. Clearly direction for involvement in the marine ecosystem obligation go beyond the marine environment within sight of the Westridge Terminal. Further, on their response to G of C Page 232, KM-TMX states to EC that <i>"In addition to these initial commitments (\$77,500), Trans Mountain will continue to identify, select and evaluate potential environmental stewardship initiatives that align with priority areas of their Environmental Stewardship Program"</i>.</p> <p>This shows that KM-TMX sees environmental stewardship obligations as voluntary and discretionary where KM-TMX will pick what it wants to support in terms of Environmental Stewardship Programs and to what level they will provide funds. The Board of FER does not support the voluntary and discretionary approach by KM-TMX in light of Issues 4, 5 and 11. We maintain that KM-TMX has no discretion with longer term involvement along the tanker route and that only through a permit condition and inclusions of oversight by a multi-stakeholder Trustee Council and specified annual budget over the long term will these issues be adequately dealt with. See the Board of FER final written evidence filing for more detail on https://docs.neb-one.gc.ca/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450919/2786560/C33-6-1 - Friends of Ecological Reserves Evidence KM TMX for NEB Report-A4Q2T7.pdf?nodeid=2786371&vernum=-2</p> <p>A request to Environment Canada</p> <p>IR 7 - Does EC support the need for long term monitoring of marine ecosystems and species along the oil</p>	<p>7. Response [EC]: In Recommendation 2-16 (C121-3 – Filing A70281 - Environment Canada - Written Evidence, PDF page 78), EC indicates that <i>"the objectives for the baseline monitoring plan should focus on the spatial/temporal abundance and distribution patterns (over four seasons) of marine birds (including seabirds, waterbirds, waterfowl, and shorebirds, where relevant) within the Project Marine Area, including Burrard Inlet, the southern Georgia Strait, southern Gulf Islands and the Juan de Fuca Strait"</i> (emphasis added). EC recommends that the marine bird baseline monitoring plan include <i>"surveys conducted three (3) years pre- and three (3) years post-expansion activities, (throughout the annual cycle and consecutive), as well as ongoing monitoring after this period at a reduced intensity for a subset of indicators"</i> (C121-3-1 Environment Canada - Written Evidence, PDF page 78).</p> <p>Additionally, EC has made a recommendation relevant to Issue 11. Recommendation 4- 5 (C121-3-1 - Environment Canada - Written Evidence, PDF page 132) states: <i>"EC recommends that the Proponent commit to supporting research on the development of standardized methods and research protocols for characterizing hydrocarbon behaviours in the environment, and to applying the new knowledge to the specific hydrocarbon products to be shipped. The resulting enhanced data and information on compositions, evaporation, emulsification, sediment mixing and other behaviours for the specific hydrocarbon products being shipped should be readily accessible to spill responders and regulators prior to transport."</i> EC believes that new information may become available over the long-term that would allow for improvements in practices, training and</p>	<p>7. This an acceptable response.</p> <p>Comment. The Board of FER is pleased the EC acknowledges that new information gaomed over the long term will help to mitigate environmental risk but EC does not provide insight on how information will be gathered. EC intends to absolve KM-TMX of any responsibility beyond a 3 year bird monitoring program. The proposal by the Board of FER is collaborative with KM-TMX EC and NGOs sharing responsibility for setting priorities for long term research and monitoring and then implementing activities to fill gaps and the regulatory agencies together with KM-TMX lean how to adapt understand the most effective incremental changes.</p> <p>We encourage EC to read the Final Evidence submission of FER on just how monitoring and research can be integrated into series of incremental improvements anticipated over a 30+ year time frame and that KM-TMX has central role to participate both with funding and directing the priorities and learning to work with other stakeholders on incremental improvements.</p>		

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	<p>tanker route and a long term role for KM-TMX to provide the resources and guidance to consistently deal with Issues 4, 5 and 11? Does EC believe that there will be new information on which to make incremental improvements in practices, training and infra-structure that will occur over the next 30 years with regard to environmental understanding and option to mitigate environmental risk?</p>	<p>infrastructure with regard to environmental understanding and options to mitigate environmental risk.</p>			
8	<p>Preamble: IR 8 through 26 are for DFO</p> <p>In the Recovery strategy for the northern and southern resident killer whales (<i>Orcinus orca</i>) in Canada http://www.sararegistry.gc.ca/default.asp?lang=En&n=A9748209-1&offset=3&toc=show The following two quotes are made:</p> <p>2.2.3 Disturbance</p> <p><i>Shipping: Commercial shipping has increased dramatically in recent years. For example, between 1995 and 1999 the worldwide commercial shipping fleet increased 12% (NRC 2003). There are few studies that have measured changes in the background underwater noise levels over time, but those that do suggest that increased vessel traffic is responsible for the increase in ambient noise over the last 100 years (e.g. Andrew et al. 2002). In the northern hemisphere, shipping noise is the dominant source of ambient noise between 10 to 200 Hz (NRC 2003). While shipping energy is concentrated at low frequencies, ships produce significant amounts of high frequency noise as well. The consequences of these chronic sources of noise on killer whales have not been assessed.</i></p> <p>2.2.4 Oil spills</p> <p><i>While the probability of either northern or southern resident killer whales being exposed to an oil spill is low, the impact of such an event is potentially catastrophic. Both populations are at risk of an oil spill because of the large volume of tanker traffic that travels in and out of Puget Sound and the Strait of Georgia (Baird 2001, Grant and Ross 2002) and the proposed expansion of tanker traffic in the north and central coast of BC. In 2003, 746 tankers and barges transported over 55 billion litres of oil and fuel through the Puget Sound (WDOE 2004). If the moratorium on oil and gas exploration and development is lifted in British Columbia, the extraction and transport of oil may put northern resident killer whales at additional risk.</i></p> <p><i>Killer whales do not appear to avoid oil, as evidenced by the 1989 Exxon Valdez oil spill in Prince William Sound, Alaska. Less than a week after the spill, resident whales from one pod were observed surfacing directly in the slick (Matkin et al. 1999). Seven whales from the pod were missing at this time, and within a year, 13 of them were dead. This rate of mortality was unprecedented, and there was strong spatial and temporal correlation between the spill and the deaths (Dahlheim and Matkin 1994, Matkin et al. 1999). The whales probably died from the inhalation of petroleum vapours (Matkin et al. 1999). Exposure to hydrocarbons can be through inhalation or ingestion, and has been reported to cause behavioural changes, inflammation of mucous membranes, lung congestion, pneumonia, liver disorders, and neurological damage (Geraci and St. Aubin 1982).</i></p> <p>In the Fisheries and Oceans Canada report of the Science Response –Pacific Region 2015/007 of January 2015 titled: SUFFICIENCY REVIEW OF THE INFORMATION ON EFFECTS OF UNDERWATER NOISE AND THE POTENTIAL FOR SHIP STRIKES FROM MARINE SHIPPING ON MARINE MAMMALS IN THE FACILITIES APPLICATION FOR THE TRANS MOUNTAIN EXPANSION PROJECT</p>	<p>8 Response [DFO]:</p> <p>The sufficiency review referenced in the information request pertains to the following Fisheries and Oceans Canada (DFO) publication: DFO. 2015. Sufficiency review of the information on effects of underwater noise and the potential for ship strikes from Marine Shipping on Marine Mammals in the Facilities Application for the Trans Mountain Expansion Project. DFO Can. Sci. Advis. Sec. Sci. Resp. 2015/007. Available at:http://www.dfo-mpo.gc.ca/csas-sccs/publications/scr-rs/2015/2015_007-eng.pdf</p> <p>The findings of the sufficiency review noted that the Proponent utilized less preferred methods of assessing impacts from acoustic disturbance and vessel strikes on marine mammals (e.g., utilization of a qualitative methodology for their ship strike assessment, and fewer sites for acoustic disturbance were modelled than preferred within the Marine RSA). However, based on the information that was provided by the Proponent, DFO was able to provide a technical review of the effects of increased Project-related marine vessel traffic on marine mammals. The findings of this technical review are available in the following publication and in subsection 5.2.2 of DFO's written evidence (NEB Document No. A4L7D4). DFO. 2015. Technical review of predicted effects and proposed mitigation of underwater noise and potential vessel strikes on marine mammals, from the December 2013 Facilities Application and supplemental information for the Trans Mountain Expansion Project. DFO Can. Sci. Advis. Sec. Sci. Resp. 2015/022. Available at: http://www.dfo-mpo.gc.ca/csas-sccs/publications/scr-rs/2015/2015_022-eng.pdf</p>	<p>This is an inadequate response</p> <p>Rational. The question was what has KM-TMX done to address the deficiencies. It is not clear from the answer that anything was done. What if anything has been done to address the short coming noted? .</p> <p>Having checked on the reference indicated: Project. DFO Can. Sci. Advis. Sec. Sci. Resp. 2015/022. Available at: http://www.dfo-mpo.gc.ca/csas-sccs/publications/scr-rs/2015/2015_022-eng.pdf</p> <p>We read the following in the conclusion:</p> <p>We assume this means that the short answer to IR 8: "Have the concerns addressed by the "Sufficiency review " been adequately addressed by TMX?" Is "NO".</p> <p>Therefore can DFO provide a confirmation to the Canadian public that this project should not proceed as long as our SARA listed species will be compromised ?</p> <p>"QUOTE: Conclusions from above reference"</p> <p><i>The information provided by the Proponent in the Project Application, and in subsequent responses to information requests by DFO, was determined to have insufficiencies. As a result, DFO's ability to definitively conclude if the Proponent has accurately assessed direct effects of underwater noise or ship strikes from Project-related vessel traffic on marine mammals is reduced. Based on the information available, DFO's review of the Project Application and subsequent responses has yielded the following conclusions. Underwater Noise The Proponent's assessment likely does not accurately characterize the effects of underwater noise on certain marine mammal indicator species in the Marine RSA. Despite the use of a state-of-</i></p>	<p>DFO is of the view that its response to the information request is complete and adequate</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis</p> <p>Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p>

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	<p>A number of criticisms of the Environmental Assessment done by the Project Application were clearly outlined:</p> <ul style="list-style-type: none"> • <i>There are deficiencies in both the assessment of potential effects resulting from ships strikes and exposure to underwater noise in the Trans Mountain Expansion Project Application documents.</i> • <i>There is insufficient information and analysis provided with which to assess ship strike risk in the Marine RSA from either existing or Project-related traffic. Ship strike is a threat of conservation concern, particularly for baleen whales such as Fin Whales, Humpback Whales and other baleen whales (Gregg et al. 2006). If shipping intensity increases as projected in Section 4.4 in the Marine RSA and the Strait of Georgia and Juan de Fuca Strait as a whole, the significance of this threat to cetacean populations that occupy the region will increase.</i> • <i>The underwater noise environment in the Marine RSA is not adequately modelled in the Project Application; only Project-related ship noise is modeled, and not the additive and cumulative effects of existing ship source noise.</i> • <i>The JASCO MONM model, as it has been applied by the Proponent, is not adequate to assess the overall impact of noise from increased Project-related traffic. Although state-of-the-art acoustic modelling has been used to model the noise propagation associated with a single Project-related tanker in the Marine RSA, only four locations were chosen to represent the Marine RSA; therefore, the assessment does not adequately represent the noise exposure for the entire time a marine mammal would be in the RSA. The assessment represents only Project-related tanker traffic and not the current noise environment or the potential increase due to Project-related traffic.</i> <p>In the written evidence of DFO:</p> <p>15-05-27 Fisheries and Oceans Canada and the Canadian Coast Guard - Written Evidence (A70242)—May 27 https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450436/2785182/C97-2-2_-_Attachment_1</p> <p>on page 2: “ <i>Although the Proponent does not own or operate the vessels calling at the Westridge Marine Terminal, it does anticipate effects as a result of underwater noise from Project-related vessel traffic on the endangered Southern Resident Killer Whale. To address this concern, the Proponent has proposed actions as part of its Marine Mammal Protection Program to support recovery of this species, which includes participation in the Enhancing Cetacean Habitat and Observation (ECHO) Program led by Port Metro Vancouver and in the Green Marine Environmental Program. DFO is supportive of these multi-stakeholder partnerships and initiatives, which are necessary for ensuring recovery of this and other aquatic species at risk.</i>”</p> <p>IR 8: Have the concerns addressed by the “Sufficiency review “ been adequately addressed by TMX?</p>		<p><i>the-art noise model, only four sites were modelled along the 296 km shipping corridor, and these sites may not be representative of acoustic properties throughout all portions of the shipping corridor. In addition, model inputs on oceanographic conditions used in the assessment could be improved. Furthermore, the assessment only addressed the noise produced and propagated from Project-related ships, and did not consider the potential cumulative and/or additive effects of such noise in combination with noise produced by existing shipping activity. The Proponent's conclusion that there would be a significant residual effect from Project-related vessel noise on Southern Resident Killer Whales is plausible; but the potential impact of such an effect on the long-term population viability of the marine mammal indicator species within the Marine RSA is unknown. It is likely that the Proponent has underestimated the potential residual effects of underwater noise on Humpback Whales in the Marine RSA. There are greater seasonal densities of Humpback Whales in the western portions of the Marine RSA than the Proponent has noted, and the strong site fidelity to specific feeding grounds for this species is likely to increase the exposure of individuals to potentially disturbing noise levels from increased Project-related vessel traffic. There are a variety of initiatives underway, both locally and globally, to develop mitigation measures to reduce levels of underwater noise generated by commercial shipping. However, there are currently no specific measures that have been implemented or required within the Marine RSA for mitigation of underwater noise generated by vessels. Ship Strike The Proponent has not considered ship strike risk to marine mammals in the context of routine operations of Project-related marine vessels. As such, a detailed quantitative assessment of 12 Pacific Region Science Response: Technical Review Trans Mountain Expansion potential residual effects of ship strikes on marine mammals from Project-related vessel traffic was not undertaken. Although the risk to Killer Whales and Steller Sea Lions from collisions with large ships is negligible, this may not be the case for</i></p>		<p>In the longer term Board of FER looks forward to working with staff DFO</p>

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			<p><i>Humpback Whales. Humpback Whales can be vulnerable to strikes from large ships including tankers, and there are higher seasonal densities of this species in the western portions of the Marine RSA than suggested by the Proponent. As a result, the Proponent's assessment of potential direct effects on Humpback Whales from collisions with Project-related vessels is likely an underestimate. There are currently no specific ship-strike mitigation guidelines or measures that have been implemented in the area of the Marine RSA or in Pacific Canadian waters. The Proponent has recognized that alterations in ship speed and routing can be effective mitigation measures to reduce ship strike risk, but has not proposed to adopt such measures because it does not own or operate the shipping vessels, or possess the regulatory authority to require such alterations".</i></p>		
9	<p>Has the limiting of vessel speeds throughout the whole of the RSA been proposed or even considered and if so what would be the speed limit placed on all tankers in the Strait of Juan de Fuca and throughout the RSA?</p>	<p>9: Response [DFO]: The Proponent has recognized that alterations in ship speed and navigation can be very effective mitigation measures to reduce marine mammal-vessel collisions in the Marine RSA. Fisheries and Oceans Canada (DFO) is not aware of marine vessel speed restrictions under consideration within the Marine RSA at this time.</p>	<p>This is not an adequate answer. Rational: Since DFO accepts the Proponents claim that marine vessel speed restrictions can be an effective mitigation measure to reduce marine mammal –Vessel collisions in the Marine RSA then it would be appropriate to make an effort to introduce vessel speeds.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer. Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO. The person responsible for approving the boiler plate answers is Bonnie Antcliffe,</p>

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					<p>Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis</p> <p>Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff DFO</p>
10	How does DFO anticipate that it would enforce noise reduction regulations throughout the marine RSA??	<p>10: Response [DFO]: Fisheries and Oceans Canada does not currently administer or enforce any noise reduction regulations in the Marine Regional Study Area (RSA); however, Section 7 of the Marine Mammal Regulations made under the Fisheries Act protects marine mammals by prohibiting their disturbance, subject to the exception set out therein.</p>	<p>This is not an adequate answer.</p> <p>Rational: Since it is recognized by DFO that vessel speed is related to noise levels as a disturbance then why does DFO not place adequate limits on noise reduction in order to ensure protection of these Species at Risk? The citizens of Canada depend on you, DFO to provide protection for our mariner species so why plate and recognize the responsibility and act on it.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is Bonnie Antcliffe, Regional Director</p>

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					<p>Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis</p> <p>Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff DFO</p>
11	<p>In the Recovery Strategy there is a statement <i>“The consequences of these chronic sources of noise on killer whales have not been assessed.”</i> Has it now been assessed and what are the implications for regulations that will come into effect for all vessels in the areas frequented by these whales?</p>	<p>11. Response [DFO]: Fisheries and Oceans Canada (DFO) is currently engaged in on-going research related to acoustic disturbance of Killer Whales, including: • Potential physical and acoustic interactions between vessels and Resident Killer Whales within their critical habitat; • Assessment of ocean noise levels in Resident Killer Whale range using calibrated hydrophone networks; and • Real-time acoustic monitoring, which involves a pilot project in partnership with Port Metro Vancouver and Transport Canada to use various technologies to monitor vessel traffic, underwater noise levels, and Resident Killer Whale presence in their critical habitat. As research and implementation of recovery measures for Resident Killer Whales is ongoing DFO cannot comment on any potential future regulations.</p>	<p>This is an acceptable response.</p> <p>Where the current baseline monitoring completed?</p> <p>This type of on-going research is very much what the Board of FER has proposed as a multi-stakeholder forum that is needed over the life of the KM-TMX should it be approved.</p> <p>The Board of FER encourages DFO to read our Final Evidence report</p>		
12	<p>What is the current level of funding provided by DFO for enforcement of the terms of the Recovery Strategy?</p>	<p>12: Response [DFO]: The information requested is outside the scope of the written evidence of Fisheries and Oceans Canada filed with the National Energy Board on May 27, 2015 (NEB Document No. A4L7D4).</p>	<p>Accepted</p>		

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		As noted in Appendix 1 Revised hearing events and steps table (4 June 2015) of Procedural Direction No. 12, provided by the National Energy Board, "Information requests to another Intervenor must pertain to matters discussed in that other Intervenor's filed written evidence."			
13	What additional expenditures by the taxpayer would be involved in enforcing regulations pertaining to this Recovery Strategy?	13: Response [DFO]: The information requested is outside the scope of the written evidence of Fisheries and Oceans Canada filed with the National Energy Board on May 27, 2015 (NEB Document No. A4L7D4). As noted in Appendix 1 Revised hearing events and steps table (4 June 2015) of Procedural Direction No. 12, provided by the National Energy Board, "Information requests to another Intervenor must pertain to matters discussed in that other Intervenor's filed written evidence."	Accepted		
14	Will any requirements for control of vessel speed be classified as a "guideline" or will they be subject to legal regulation?	14: Response [DFO]: Fisheries and Oceans Canada (DFO) does not regulate marine vessel speed	<p>This not an acceptable response. Rational. The southern killer whales are at risk and shipping noise is related to whale communication. If DFO cannot through endangered species see changes in noise related to endangered species then who does?</p> <p>DFO has indicated that the proponents claim that marine vessel speed restrictions can be an effective mitigation measure to reduce marine mammal –Vessel collisions in the Marine RS."</p> <p>Surely it is someone's responsibility since from DFO written evidence " <i>Designated critical habitat, which is legally protected under the SARA, for the endangered Southern Resident Killer Whale overlaps almost entirely with the Marine RSA. Critical Habitat has been identified for the Humpback Whale and information has been provided by DFO in support of identification of critical habitat for the Bigg's Killer Whale (Ford 5 et al. 2013); the Marine RSA overlaps the proposed critical habitats for both these species as well.</i></p>	DFO is of the view that its response to the information request is complete and adequate	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p>

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			<p>Is industry expected to self-regulate on tanker speed based on voluntary best management practices? Who would DFO work with to regulate shipping noise through changes in tanker speeds?</p>		<p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada Alston.Bonamis@dfo-mpo.gc.ca In the longer term Board of FER looks forward to working with staff DFO.</p>
15	<p>Another concern of the Sufficiency Report was the collision with large cetaceans. Concern for this has not been mentioned in the written evidence of DFO. Please explain why and what measures are being proposed to address this problem?</p>	<p>15: Response [DFO]: Subsection 5.2.2.2 of the written evidence of Fisheries and Oceans Canada (NEB Document No. A4L7D4) discusses the Department's views on potential Project-related marine mammal-vessel collisions. Alteration of shipping lanes and vessel speed have been suggested by the Proponent as potential mitigation measures. Implementation of similar measures in the Marine RSA may further reduce the likelihood of mammal vessel collision for Project-related vessels and other marine vessels transiting through the Marine RSA.</p>	<p>This is not an adequate response. Rational: DFO has responsible for an endangered species the question is what if anything is DFO prepared to do in light of increasing tanker traffic. The proponent has suggested changes to tanker speed to decrease probable causes of mortality. Will DFO advise NEB on tanker speed as KM-TMX condition.</p>	<p>DFO is of the view that its response to the information request is complete and adequate</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer. Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO. The person responsible for approving the boilerplate answers is Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada Filer of the response is Alston Bonamis</p>

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					<p>Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at DFO..</p>
16	In the written evidence provided by the Board of FER, updated information on population numbers of elephant seals and Cetacean whale sightings in the area of the Race Rocks Ecological reserve has been provided. C33-6 Since up-to-date information such as this was not included in the Consultants reports (Stantec) of TMX, has the DFO made any attempt to correct previous estimates of Cetacean residence in the Marine RSA?	16: Response [DFO]: The information requested is outside the scope of the written evidence of Fisheries and Oceans Canada filed with the National Energy Board on May 27, 2015 (NEB Document No. A4L7D4). As noted in Appendix 1 Revised hearing events and steps table (4 June 2015) of Procedural Direction No. 12, provided by the National Energy Board, "Information requests to another Intervenor must pertain to matters discussed in that other Intervenor's filed written evidence	<p>This is not an adequate answer.</p> <p>Rational: This request is within scope as DFO states in the written evidence " <i>The marine environment within the shipping Marine RSA provides important and productive habitats for breeding, migration, foraging and socialization for marine mammal species that may use the area seasonally or year-round depending on their life-history needs. These marine mammals include cetaceans (whales, dolphins, and porpoises), pinnipeds (seals and sea lions), and Sea Otters.</i></p> <p>Board of FER is clarifying that DFO may be relying on out of date statistics when it comes to numbers and locations of populations and breeding colonies.</p>	DFO is of the view that its response to the information request is complete and adequate	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis</p> <p>Fisheries Biologist, Fisheries Protection</p>

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					<p>Program Fisheries and Oceans Canada, Government of Canada Alston.Bonamis@dfo-mpo.gc.ca In the longer term Board of FER looks forward to working with staff DFO.</p>
17	<p>Given that the proposed outbound traffic lanes are very close to Race Rocks Ecological Reserve, and given that the largest colonies in the marine RSA of 4 species of marine mammals are present year-round in this Reserve, and since two species annually use this Ecological reserve as birthing colonies, and since DFO is responsible for the welfare of all marine mammals, what if any regulations has the DFO provided that ensure that this resource is protected from catastrophic and chronic oil spills?</p>	<p>17: Response [DFO]: The information requested is outside the scope of the written evidence of Fisheries and Oceans Canada filed with the National Energy Board on May 27, 2015 (NEB Document No. A4L7D4). As noted in Appendix 1 Revised hearing events and steps table (4 June 2015) of Procedural Direction No. 12, provided by the National Energy Board, "Information requests to another Intervenor must pertain to matters discussed in that other Intervenor's filed written evidence." However, please note that Section 7 of the Marine Mammal Regulations made under the Fisheries Act protects marine mammals by prohibiting their disturbance, subject to the exception set out therein, and that administration and enforcement of the pollution prevention provisions of the Fisheries Act (Subsections 36(3) to (6)) are the responsibility of Environment Canada.</p>	<p>This is not an adequate answer . Again refer to the above concern we have expressed in 16.</p>	<p>DFO is of the view that its response to the information request is complete and adequate</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer. Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO. The person responsible for approving the boiler plate answers is Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans</p>

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					Canada, Government of Canada Alston.Bonamis@dfo-mpo.gc.ca In the longer term Board of FER looks forward to working with staff at DFO.
18	<p>https://docs.neb-one.gc.ca/ll-eng/llisapi.dll/fetch/2000/90464/90552/548311/956726/2392873/2449925/2450436/2526178/C97-1-2_-_DFO_Resident_Killer_Whale_Action_Plan_-_A4C9X2.pdf?nodeid=2526375&vernum=-2 High priority was assigned to a number of Actions such as .</p> <p><i>1. Undertake an annual census to monitor and assess Resident Killer Whale population dynamics (multi-species ship surveys and dedicated vessel surveys). Has this data been made available to the NEB and TMX? And if not when will it be made available?</i></p>	<p>18: Response [DFO]: The information requested is outside the scope of the written evidence of Fisheries and Oceans Canada (DFO) filed with the National Energy Board on May 27, 2015 (NEB Document No. A4L7D4). As noted in Appendix 1 Revised hearing events and steps table (4 June 2015) of Procedural Direction No. 12, provided by the National Energy Board, "Information requests to another Intervenor must pertain to matters discussed in that other Intervenor's filed written evidence." However, DFO would like to note that annual census information for Southern Resident Killer Whales is publicly available on the Center for Whale Research Website: http://www.whaleresearch.com</p>	<p>Again your quote: "The marine environment within the shipping Marine RSA provides important and productive habitats for breeding, migration, foraging and socialization for marine mammal species that may use the area seasonally or year-round depending on their life-history needs. These marine mammals include cetaceans (whales, dolphins, and porpoises), pinnipeds (seals and sea lions), and Sea Otters."</p> <p>Now if that statement was made as part of your written evidence, then we can be justified in inferring that you accept responsibility for the proper and rigorous management of these resources. Just avoiding these questions and saying they are out of scope is in our opinion irresponsible for an agency trusted with management of these resources.</p>	<p>DFO is of the view that its response to the information request is complete and adequate</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis</p> <p>Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of</p>

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					<p>Canada Alston.Bonamis@dfo-mpo.gc.ca In the longer term Board of FER looks forward to working with staff DFO</p>
19	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as . 2. <i>Identify year round Resident Killer Whale distribution and diet using acoustic monitoring and dedicated vessel surveys.</i> IR Has this data been made available to the NEB and TMX? And if not when will it be made available?</p>	<p>19: Response [DFO] to IRs 19-27: The information requested is outside the scope of the written evidence of Fisheries and Oceans Canada filed with the National Energy Board on May 27, 2015 (NEB Document No. A4L7D4). As noted in Appendix 1 Revised hearing events and steps table (4 June 2015) of Procedural Direction No. 12, provided by the National Energy Board, "Information requests to another Intervenor must pertain to matters discussed in that other Intervenor's filed written evidence."</p>	<p>This is not an adequate answer . Again refer to the above concern we have expressed in 16.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer. Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO. The person responsible for approving the boiler plate answers is Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada Alston.Bonamis@dfo-mpo.gc.ca</p>

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					<p>mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at DFO.</p>
20	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as .</p> <p><i>4. Examine the CANFIS/catch per unit effort (CPUE) records to assist in identifying areas of prey aggregation in order to anticipate Resident Killer Whale foraging grounds.</i></p> <p>IR-Please provide the results of this annual census for 2014 so that TMX has the most up-to-date information?</p>		<p>This is not an adequate answer . Again refer to the above concern we have expressed in 16.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p>

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					In the longer term Board of FER looks forward to working with staff at DFO.
21	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as.</p> <p><i>35 -Work with other government departments, non-governmental organizations, and industry to promote best practices, mitigation protocols and outreach efforts for the protection of Resident Killer Whales and their habitat from pollution (e.g., spill response protocols)</i></p> <p>IR-Please provide a list of what best practices, mitigation protocols and outreach efforts for the protection of Killer whales have been identified and agreed upon by those departments and agencies since the release of this report in 2013.</p>		This is not an adequate answer. Again refer to the above concern we have expressed in 16.	DFO is of the view that its response to the information request is complete and adequate.	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p>

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					In the longer term Board of FER looks forward to working with staff at DFO..
22	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as.</p> <p><i>46 Utilize Automatic Identification System (AIS) data in conjunction with hydrophone networks to identify vessel tracks and types and correlate sound signatures.</i></p> <p>IR-Please provide your findings so far on this High priority Action.</p>		This is not an adequate answer . Again refer to the above concern we have expressed in 16.	DFO is of the view that its response to the information request is complete and adequate.	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to</p>

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					working with staff at at DFO..
23	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as.</p> <p><i>48. Determine acoustic profiles of vessel type and speed to noise output, and utilize sound propagation models to yield source patterns. .</i></p> <p>IR-Please provide your findings so far on this High priority Action.</p>		<p>This is not an adequate answer . Again refer to the above concern we have expressed in 16.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at at</p>

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					DFO..
24	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as.</p> <p><i>54. Develop an acoustic model that incorporates effects of increasing ambient noise levels on communication signals of Killer Whales</i></p> <p>IRPlease provide your findings so far on this High priority Action?</p>		<p>This is not an adequate answer . Again refer to the above concern we have expressed in 16.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at DFO..</p>

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25	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as.</p> <p><i>72. Continue efforts outlined in Broad Strategy 3 to ensure disturbance from human activities does not prevent access of Resident Killer Whales to their critical habitat.</i></p> <p>IR- Please provide a summary of your efforts so far on this High priority Action.</p>		<p>This is not an adequate answer . Again refer to the above concern we have expressed in 16.</p>	<p>DFO is of the view that its response to the information request is complete and adequate.</p>	<p>We feel obligated to register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at DFO..</p>
26	<p>In the 2013 issued Draft Action Plan: High priority was assigned to a number of Actions such as.</p>		<p>This is not an adequate answer . Again refer to the</p>	<p>DFO is of the view that its</p>	<p>We feel obligated to</p>

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	<p>26. <i>Identify and monitor contaminants of concern, and conduct a risk-based assessment of different chemicals of concern in Killer Whales, their prey, and their habitat .</i></p> <p>IR-If this has been done, please provide information gleaned through this exercise on the chemical components of Dilbit, and indicate how Killer whales fare in the Risk-based Assessment? If it has not been done yet, does DFO anticipate that this information will be available prior to any government approval of the TMX project.?</p>		above concern we have expressed in 16.	response to the information request is complete and adequate.	<p>register our disappointment with the inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis Fisheries Biologist, Fisheries Protection Program Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at DFO..</p>
27	<p>In the March 2015 paper prepared for DFO : http://www.dfo-mpo.gc.ca/csas-sccs/publications/resdocs-docrech/2015/2015_007-eng.html. A literature review on the aquatic toxicology of petroleum oil: An overview of oil properties and effects to aquatic biota Alain Dupuis¹ and Francisco Ucan-Marín²</p>		This is not an adequate answer . Again refer to the above concern we have expressed in 16.	DFO is of the view that its response to the information request is complete and	We feel obligated to register our disappointment with the

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	<p>Fisheries and Oceans Canada Ecosystems and Oceans Science Sector National Contaminants Advisory Group 501 University Crescent Winnipeg, Manitoba R3T 2N6 A number of serious concerns related to the toxicity of dilbit in the marine environment were raised how does DFO plans to respond to these concerns .Since DFO scientists have identified concerns of about toxicology what measures will DFO seek through the NEB process for KM TMX project application?</p>			adequate	<p>inability of the DFO to be forthright in their response to our legitimate questions with the boilerplate answer.</p> <p>Board of FER sees the dialogue begun with DFO is incomplete. It our sincere hope that NEB shares the need to have more information to inform the NEB decision and that NEB will follow-up with DFO.</p> <p>The person responsible for approving the boiler plate answers is</p> <p>Bonnie Antcliffe, Regional Director Ecosystem Management Branch Fisheries and Oceans Canada</p> <p>Filer of the response is Alston Bonamis</p> <p>Fisheries Biologist, Fisheries Protection Program</p> <p>Fisheries and Oceans Canada, Government of Canada</p> <p>Alston.Bonamis@dfo-mpo.gc.ca</p> <p>In the longer term Board of FER looks forward to working with staff at DFO..</p>