

January 31, 2024

The Right Honourable Justin Trudeau  
Prime Minister of Canada  
80 Wellington Street  
Ottawa, ON K1A 0A2

(via e-mail: [justin.trudeau@parl.gc.ca](mailto:justin.trudeau@parl.gc.ca))

**Re: First Nations Oversight of Marine Shipping in the Salish Sea, Strait of Juan de Fuca and western approach to the Strait**

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We the undersigned are First Nations leaders representing First Nations impacted by marine shipping through the Salish Sea, the Strait of Juan de Fuca and the western approach to the Strait (Western Approach). We are members of the Marine Shipping Subcommittee of the Indigenous Advisory and Monitoring Committee on the Trans Mountain Expansion Project, Existing Pipeline, and Marine Shipping ("IAMC-TMX"). The Marine Shipping Subcommittee ("MSSC") is comprised of 29 out of the 32 First Nations that form the Trans Mountain Expansion Project consultation list in the marine space. We take inspiration from Chief Ernie Crey and Chief Aaron Sam, who wrote to you regarding the establishment of the IAMC-TMX. Several of us met with you in June 2018 in Cheam to discuss their letter and the work of the IAMC-TMX.

In summary, this letter identifies that the close of construction on the TMX Project does not indicate that the work of the IAMC-TMX or the risks to impacted First Nations is in any way reduced but in fact that the risks to the impacted First Nations, particularly those along the marine shipping route, will ratchet up. To respond to this increased risk to the 29 impacted marine communities, the Prime Minister needs to support a robust renewal of the IAMC-TMX to enable its Marine Shipping Subcommittee to provide a First Nations-led forum for collaborative oversight of regulatory compliance in the marine environment. This ask is also supported by several inland First Nations.

**Risks to our First Nations will ratchet up when Project construction is complete**

For generations beyond counting, the waters referred to above have supported and nourished our peoples. We in turn have used and cared for the waters, exercising our Aboriginal title and our sovereignty.

Today, however, these marine areas are crisscrossed by hundreds of ships daily. Formally, and for now setting aside commentary on adequacy, they are overseen and regulated not by us, but by Transport Canada, the Coast Guard and the Department of Fisheries and Oceans. They interfere with our own navigation, they create underwater noise that harms cetaceans, their wake erodes our shorelines and impacts our sites of significance, and they carry bunker oil and other fuels that threaten us, our livelihoods, and marine

life and habitat both through ongoing chronic pollution, or in the event of an incident. Some of them carry oil or LNG for export, and in the foreseeable future they will be joined by many more ships carrying crude oil, diluted bitumen, and other petroleum products from the Trans Mountain Expansion Project. These are serious changes in our marine environment: we will see a sevenfold increase in oil tanker traffic -- from one oil tanker per week to seven tankers per week.

The significant increase in oil tanker traffic puts our First Nations at a substantially greater risk of spill, accident, or other marine emergency. It places seven times more oil tankers filled with substantially more oil in waters frequented by endangered Southern Resident Killer Whales and other cetaceans, the critical habitat of Fraser River sockeye and other critical salmon species, the harvesting areas for at least 32 First Nations, and passes between the shores of many First Nations seeking to exercise their Aboriginal and Treaty rights in the marine waters. We need a regulatory environment that promotes regulatory excellence in order to properly protect cetaceans, salmon, and our foreshores,

The IAMC-TMX and the Indigenous Caucus and Marine Shipping Subcommittee that exist within it, is an excellent step towards regulatory excellence. The IAMC-TMX has greatly expanded the quality and quantity of Indigenous monitors during construction and expansion of the TMX pipeline; we have worked with federal regulators to co-develop a critical Action Plan Measure to be included in the *United Nations Declaration Act* ("**UNDA**") Action Plan (No. 34). The Marine Shipping Subcommittee has brought together 29 of the 32 marine communities along TMX's shipping route to aggregate expertise including traditional knowledge to help inform better regulation of the marine environment post construction.

First Nations leadership is critical to effectively regulating and monitoring the marine environment. We have seen first-hand that well-considered project conditions and mitigation measures do not fully stop all environmental impacts. For example, on September 25, 2023 the Canada Energy Regulator ("**CER**") approved a trench through a sacred Stk'emlúpsenc te Secwépemc site – Pípsell (Jacko Lake and Area) – despite commitments made to the contrary in the Project approval. We have seen compliance issues related to the protection of sacred sites and areas of cultural significance (e.g. culturally modified trees) throughout construction. These outcomes are predictable when the regulatory environment is not sufficiently informed by First Nations perspectives. As such, we fear these type of impacts will continue when the expansion is complete.

Given the risks of shipping traffic to our rights and way of life, Canada has been engaging with us under the umbrella of the Oceans Protection Plan and the Salish Sea Initiative. We acknowledge that more money and focus have been committed to protecting our marine areas, but we are dismayed that our involvement still follows so closely the same old pattern: informing us how *Canada* will regulate the shipping and protect our marine



waters.

### **Continued First Nations leadership and oversight is required**

An approach that informs our First Nations on how Canada will exercise regulatory responsibility is rooted in the colonial assumption that Canada has the sole right to govern marine waters. That assumption could only ever be maintained by ignoring the depth of the rights our First Nations hold: Aboriginal title over various portions of the marine shipping route, Aboriginal and Treaty rights to fish and harvest and navigate, and rights guaranteed under historical and modern treaties. Such an approach also does not sufficiently take into account traditional knowledge. Where Canada has policy, our First Nations communities have equally authoritative laws/teachings. The Hul'qumi'num word for these laws/teachings is Snuw'uy'ul. Other languages and dialects use other words or variations. For too long, these Snuw'uy'ul have been discounted by Canada, yet they are essential to the governance of marine waters and to who we are as a people.

With the passage of the *UNDA*, however, Canada has chosen to discard colonial thinking and instead build a new, more productive relationship with First Nations like ours. As stated in the preamble of the *UNDA*, this new relationship will be "based on the recognition and implementation of the inherent right to self-determination, including the right of self-government". The right of self-determination is reflected, for instance, in Article 32, which recognizes that "Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources", and which requires our free, prior and informed consent prior to the approval of projects that might affect our territories.

The United Nations Declaration on the Rights of Indigenous Peoples ("**UNDRIP**") reveals clearly the inadequacy of the old (and unfortunately, still current) consultation model. Certainly, we need Canada to be informed of our interests and to prioritize them in its regulation of marine traffic, but that is not enough. Nor is it sufficient for us simply to be part of emergency planning and response. What we need is a collective space for leadership to speak with the government on the areas of common interest where the *UNDA* is concerned, including how we will organize ourselves to address and implement the *UNDA*.

At minimum, the right of self-determination requires oversight of marine shipping regulation, socio-economic effects (including those on Missing and Murdered Indigenous Women, Girls, and 2-Spirit people), and emergency preparedness and response. We need to review the marine safety system, to work with Canada to identify weaknesses and strategies to address them, and to monitor the system in action so that deficiencies are corrected before they lead to disasters that devastate our territories and peoples.

That right to self-determination is inherent in each of our First Nations as unique, self-



governing peoples with our own suite of rights. However, we also recognize that effective oversight of marine shipping requires a collective, multi-First Nation dimension. A ship sailing from the Port of Vancouver out through the Strait of Juan de Fuca traverses the territories of many First Nations, and a major oil spill will substantially negatively impact all of our First Nations, not just a few. Each First Nation cannot respond to the risks posed by marine shipping alone. Together, we need to form an integrated approach to the protection and marine monitoring of the ocean.

Accordingly, while the right of self-determination will always reside in each First Nation, our First Nations need to be supported by an effective, well-resourced entity to provide leadership, technical expertise, personnel and a forum to adopt collective action. We see an opportunity to work collectively to elevate First Nations perspectives that are not yet part of the marine regulatory framework, and should be. It is also essential that our First Nations – governments – play a regulatory role. We are all watchful of port modernization processes and need to ensure that the protection of our rights is not watered down through any transfer of authorities.

We recognize a parallel in the IAMC-TMX. On the terrestrial side, the IAMC-TMX has long had monitors on the ground, accompanying CER inspectors. The IAMC-TMX has been able to develop mostly productive relationships with federal regulators that have caused those regulators – particularly the CER – to change their policies to more fully incorporate Indigenous interests. This is a positive move for all Canadians. It can, and should, be emulated in the marine space. However, it will take a serious mindset change in the marine-focused departments, particularly the Department of Fisheries and Oceans and Transport Canada.

The IAMC-TMX has a mandate to monitor and advise on marine shipping, and while we support the development of a pilot program to support marine monitoring of TMX vessels it is not enough for First Nations monitoring to extend only to a small fraction of the marine shipping through the Salish Sea and the Strait. Whether it be through the IAMC-TMX's Marine Shipping Subcommittee or a newly-created First Nations-led platform, we need a collective entity and a collaborative forum like the IAMC-TMX to undertake the technical work necessary to support our First Nations' oversight of all of the marine shipping and the entire marine safety system.

**Establish a First Nations-led collective of First Nations directly affected by marine shipping to oversee regulation of marine shipping**

Our ask of you, Prime Minister, is to meet with the undersigned marine leaders, and to commit to a robust renewal of the IAMC-TMX that provides comparable resources to enhance our marine First Nations' capacities to collaboratively oversee marine shipping as your government committed to by enabling terrestrial-based First Nations to oversee TMX construction activities. A First Nations-led collective entity of First Nations directly affected by activities along the marine shipping corridor of BC's South Coast is critical



at this time. Such an entity would have an understanding of our respective First Nations' Aboriginal and Treaty rights and would provide the space for technical capacity and empower the collective action necessary for our effective self-determination in respect of marine shipping. With construction nearly complete and shipping set to begin in earnest shortly thereafter, the time is now to take a step towards a regulatory framework over the waters that is imbued with traditional authority. In short, it is the sort of effective measure for enabling self-determination that the *UNDA* demands.

#### **Support for this request extends beyond marine First Nations**

You will note below that this letter is signed by many First Nations leaders from the marine communities impacted by the Trans Mountain Existing Pipeline, Expansion Project, and Marine Shipping but you will also see signatures from leaders of inland First Nations. Marine issues do not simply affect the First Nations whose traditional territories include marine waters. They also affect those who rely on the fish and aquatic species that populate the rivers, the salmon that spawn deep into Sto:lo territory, and the wildlife and plants that rely on a healthy and abundant ecosystem to thrive. We are all interconnected and the impacts to the marine ecosystem will be felt well up the line.

#### **Closing and Request**

We look forward to hearing from you on or before March 15, 2024. We are currently seeking meetings with your Cabinet colleagues the week of February 12-16, 2024. Most importantly, we hope to meet with you either before or after that time.

Sincerely,

  
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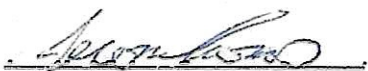
Chief Tanya Jimmy  
Tseycum First Nation



Chief Judi Thomas  
Ditidaht First Nation



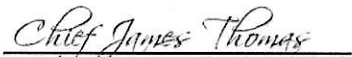
Chief Ron Sam  
Songhees First Nation



Chief Jerome Thomas  
Esquimalt First Nation



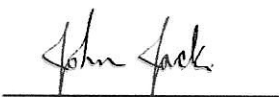
Chief Harley Chappell  
Semiahmoo First Nation



Chief James Thomas  
Halalt First Nation



Chief Jennifer Thomas  
Tsleil-Waututh First Nation



Chief John Jack  
Huu-ay-aht First Nations



Chief Ron Giesbrecht  
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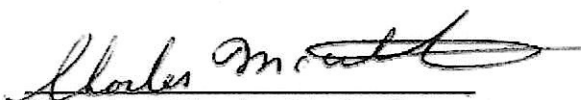
Chief Councillor Wilfred Cootes  
Uchucklesaht Tribe Government



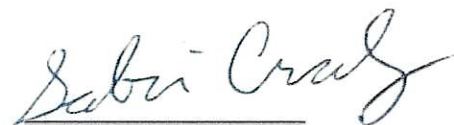
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Hereditary Chief Christopher Bob  
Snaw-naw-as First Nation



Chief Laura Cassidy  
Tsawwassen First Nation



Chief Rickie Pamela Jack  
Penelakut First nation



Chief Daniel Manuel  
Upper Nicola Band



Tribal Chief Doug Kelly  
Sto:lo Tribal Council



Chief Marcel Shackelly  
Nooaitch Indian Band



Chief George Lampreau  
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