



200-1627 Fort Street, Victoria BC V8R 1H8  
Telephone **(250) 405-5151** Fax (250) 405-5155

Toll Free via Enquiry BC in Vancouver 604.660-2421. Elsewhere in BC **1.800.663.7867**

Email [information@islandstrust.bc.ca](mailto:information@islandstrust.bc.ca)

Web [www.islandstrust.bc.ca](http://www.islandstrust.bc.ca)

June 16, 2011

National Energy Board  
444 Seventh Ave SW  
Calgary AB T2P 0X8

**Attention: Anne-Marie Erickson**

Dear Ms. Erickson:

**Re: Trans Mountain Pipeline ULC Firm Service Application (RH-2-2011)**

I am writing on behalf of the Islands Trust Council's Executive Committee to express two significant public interest concerns to the National Energy Board (NEB or Board) about the Trans Mountain Pipeline ULC Firm Service application.

As explained below, we are concerned that NEB approval of more committed capacity to Westridge marine terminal will lay the foundation for increasing tanker traffic. This concern is compounded by the fact that approval of long-term firm service contracts could significantly constrain the ability of other government regulators to achieve optimal and acceptable levels of social and environmental risk associated with future oil tanker traffic frequencies and product volumes within the southern Salish Sea.<sup>1</sup>

We are also concerned about the lack of consultation with coastal communities about this application and about the dramatic recent increases in tanker and oil barge traffic from Westridge marine terminal in Burnaby through the southern Salish Sea.

Overview of Islands Trust

The Islands Trust is a federation of independent local governments that represents 25,000 people living within the Islands Trust Area. The Islands Trust Area covers the islands and waters between the British Columbia mainland and southern Vancouver Island. It includes 13 major and more than 450 smaller islands and covers 5200 square kilometres. The Islands Trust has a legislated mandate to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the province generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the Government of British Columbia.

The *Islands Trust Policy Statement*, approved by the BC Minister of Municipal Affairs in 1994, was developed in response to the need for preservation and protection of the Trust Area, the need for leadership in achieving this objective, and to meet the Islands Trust's legislated requirements

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<sup>1</sup> The Salish Sea encompasses inland waterways stretching from the south end of Puget Sound in Washington State to Desolation Sound at the northern end of the Strait of Georgia in B.C., including the Juan de Fuca Strait. The Salish Sea was named in 2010 by the Province of British Columbia, Canada and Washington State. Similar to the Great Lakes, the Salish Sea umbrella-name for the larger body of water does not change names already in place.

under BC's *Islands Trust Act*.<sup>2</sup> In the Roles and Responsibilities section the Policy Statement states:

“The Islands Trust Council cannot effectively implement the Policy Statement without the support of all stakeholders. Assistance, cooperation and collaboration are required from local trust committees, island municipalities, the Trust Fund Board, the Provincial Government, other government agencies, non-government organizations, communities, First Nations, property owners, residents and visitors.”

Under our legislated mandate, the Islands Trust Council has had an ongoing interest in marine health and oil spill issues since 1979.

#### Our Concerns:

Through this application, Trans Mountain Pipeline is seeking to amend its Petroleum Tariff Rules and Regulations. The NEB website explains that a pipeline company's tariff contains the conditions under which transportation service is provided. The tariff includes conditions on accepting new shippers, on allocating capacity to shippers and on determining which position a prospective shipper will occupy on the waiting list for service.<sup>3</sup>

When this application came to our attention, we were surprised to learn that it appears there are currently no regulatory limits on how much petroleum Trans Mountain Pipeline can deliver to the Westridge marine terminal, and that the only limits on tanker or oil barge traffic are the pipeline's 300,000 barrel per day (bpd) capacity and the Port Metro Vancouver's operating limitations for Second Narrows. In 2010 Trans Mountain was already shipping an approximate average of 80,000 bpd to Westridge marine terminal, with shipments on some occasions increasing to an approximate average of 143,000 bpd day.<sup>4</sup>

Trans Mountain Pipeline is applying to reallocate 27,000 bpd of land capacity (currently allocated to refinery and terminal locations in BC and Washington State) to the Westridge marine terminal. As a result the amount of pipeline capacity formally allocated to Westridge marine terminal will rise from 52,000 bpd to 79,000 bpd. This Trans Mountain Pipeline request to change the allocation of pipeline capacity worries us as it will formalize the recent growth in oil exports from Westridge marine terminal and facilitate increases in tanker traffic.

By permitting Trans Mountain Pipeline to allocate more capacity to Westridge marine terminal, the National Energy Board would make it easier for companies wanting to move petroleum products by tanker or oil barge to get space on the pipeline. It seems likely to us that this change would soon lead to exported amounts well beyond the 79,000 bpd average, as we understand Trans Mountain Pipeline would also be able to continue to reallocate land capacity to Westridge marine terminal as needed.

We are also concerned that the contractual certainty the requested Firm Service transportation service agreements would offer to Canadian producers and their potential off-shore buyers, when combined with this reallocation of capacity, will also lead to a long-term increase in tanker traffic. The increased certainty offered by the Firm Service contracts seems likely to lead to higher prices for the sold oil, leading to more investment in seeking offshore markets and thus to more tankers through the Salish Sea.

Additionally, we are very concerned that approval of Firm Service contracts for oil shipments to Westridge marine terminal would result in Trans Mountain Pipeline being bound by contracts to ship minimum volumes of oil to the terminal. These contracts, once approved by the NEB, may well remove the ability of regulatory agencies to reduce the numbers of tankers or oil barges, or the amount or type of oil shipped in the vessels. This flexibility is needed for regulators to be able to respond to marine traffic risk assessments or oil spill response deficiencies or limitations.

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<sup>2</sup> [http://www.bclaws.ca/EPLibraries/bclaws\\_new/document/ID/freeside/00\\_96239\\_01](http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96239_01)

<sup>3</sup> <http://www.neb-one.gc.ca/clf-nsi/rthnb/whwrndrgvrnnc/rrspnsblt-eng.html>

<sup>4</sup> [http://www.kindermorgan.com/investor/presentations/2011\\_Analysts\\_Conf\\_05\\_KM\\_Canada.pdf](http://www.kindermorgan.com/investor/presentations/2011_Analysts_Conf_05_KM_Canada.pdf), slide 8 of 12.

We believe that regulating tanker and oil barge levels should remain flexible for the following three reasons:

1. The risks associated with increased shipping traffic in the already busy shipping lanes of the Salish Sea need to be assessed.
2. The Salish Sea's geography makes oil spill recovery difficult.
3. The environmental impacts of spilled unconventional oil products may pose extra challenges for spill response.

The rationale for these reasons is as follows:

- 1) The risks associated with increased shipping traffic in the already busy shipping lanes of the Salish Sea need to be assessed.

Increasing tanker and oil barge traffic in this remarkably special area heightens the risk of an oil spill that could cause significant environmental, economic and social harm. A full description of the human and marine environments of the southern Salish Sea is attached<sup>5</sup>.

We are concerned about the predicted increase in traffic as there have not been, to our knowledge, recent assessments by federal regulators on the oil spill and other environmental risks associated with current or projected marine traffic in the Salish Sea. Container traffic through B.C.'s West Coast is expected to double over the next 10 to 15 years, and nearly triple by 2030.<sup>6</sup> This is in addition to predicted increases in other vessel traffic.

A recent assessment of oil spill response preparedness by the Office of the Auditor General of Canada is documented in the *Report of the Commissioner of the Environment and Sustainable Development to the House of Commons, Chapter 1, Oil Spills from Ships*, released in Fall 2010.<sup>7</sup> The report identifies numerous deficiencies with regard to:

- Transport Canada's and the Canadian Coast Guard's risk assessments related to oil spills from ships;
- the process to provide assurances that the Canadian Coast Guard's oil spill response system is ready to respond effectively; and
- the Canadian Coast Guard's ability to determine how much oil spill response equipment it should have and whether it has appropriate capacity to address the risks.

The report recommends: "Building on the risk assessments conducted to date, Transport Canada and the Canadian Coast Guard should conduct a risk assessment related to ship-source oil spills covering Canada's three coasts."

Transport Canada, Environment Canada and the Canadian Coast Guard agreed with the above recommendation. In response to the recommendation, Transport Canada stated in the report: "Transport Canada has undertaken talks with the Canadian Coast Guard and Environment Canada with a view to reviewing Canada's national oil spill response regime. We will build on risk assessments of ship-source oil spill preparedness and response regimes of all Canadian waters, including the three coasts. Scoping of this risk assessment will commence this year and be completed by the end of 2011–12."<sup>8</sup>

In addition to risk assessments being planned by Canadian agencies regarding marine traffic and oil spill preparedness in the Salish Sea, the United States Army Corps of Engineers is planning to

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<sup>5</sup> Appendix IV: Descriptions of the CANUSDIX and CANUSPAC Transboundary Areas, [Final Project Report of the Stakeholder Workgroup Review of Planning and Response Capabilities for a Marine Oil Spill on the U.S./Canadian Transboundary Areas of the Pacific Coast](#), sponsored by the Pacific States/British Columbia Oil Spill Task Force, 233 – 243.

<sup>6</sup> [http://www.portmetrovancover.com/en/projects/ongoing\\_projects/CCIP.aspx](http://www.portmetrovancover.com/en/projects/ongoing_projects/CCIP.aspx)

<sup>7</sup> [http://publications.gc.ca/collections/collection\\_2011/bvg-oag/FA1-2-2010-1-eng.pdf](http://publications.gc.ca/collections/collection_2011/bvg-oag/FA1-2-2010-1-eng.pdf)

<sup>8</sup> [http://publications.gc.ca/collections/collection\\_2011/bvg-oag/FA1-2-2010-1-eng.pdf](http://publications.gc.ca/collections/collection_2011/bvg-oag/FA1-2-2010-1-eng.pdf)

release soon the *BP Cherry Point Refinery Marine Terminal North Wing Extension Environmental Impact Statement (EIS)*.<sup>9</sup> The EIS will incorporate the results of a Vessel Traffic Risk Assessment (VTRA) and an oil spill fate and effects analysis. The Marine Traffic Study Area proposed in the Scoping Summary Report for the EIS includes Canadian waters. The study incorporates all types of vessel traffic transiting the Salish Sea, including vessels bound for British Columbia.

These risk assessments must be considered before the NEB makes a decision to enable Firm Service contracts that bind a pipeline company to ship minimum volumes of oil destined for tankers and oil barges.

Enbridge's proposed Northern Gateway pipeline project, currently before the National Energy Board, was required to submit a myriad of reports and studies on tanker traffic and oil spill response plans. The recent incremental increases in petroleum exported from Westridge marine terminal have not resulted in a similar level of study by Trans Mountain Pipelines, or, if these studies have been completed, they have not been publicly released.

2) The Salish Sea's geography makes oil spill recovery difficult due to its high currents and the low energy environments of its passages and islands.

Much of the Salish Sea is a sheltered environment. Petroleum products spilled here will not readily flush out to deep sea and disperse. Instead, the tides and currents of this area will result in the oil spill moving in a circular gyre and washing up on local shorelines.<sup>10</sup> Compounding this issue is the fact that along most of the route travelled by tankers and oil barges that leave Westridge marine terminal, it is a very small distance from the vessel to the shore. At a marine shipping safety session hosted by Islands Trust Council in June 2010, our elected officials heard that an oil spill response cleanup operation is considered successful with the recovery of just 10%-15%<sup>11</sup> of the spilled oil. This low recovery rate, which may be even less given the weather conditions and geography of the Salish Sea, makes prevention paramount.

3) The environmental impacts of spilled unconventional oil products may pose extra challenges for spill response

We are concerned that this already low recovery rate could be even lower for the oil sands products (diluted bitumen and syncrude) that Trans Mountain Pipelines delivers to Westridge marine terminal, as these products may pose greater spill response challenges. Further, they have different environmental impacts than conventional crude oils. We understand that there is little experience in their fate, effect, containment and cleanup, and that more scientific study and response technology testing is needed.

Diluted bitumen, or DilBit, is one of the unconventional petroleum types shipped from Westridge marine terminal in tankers. Diluted bitumen is bitumen (a petroleum product from oil sands production with a consistency comparable to that of peanut butter) that has water, clay and sand removed and is diluted (usually with condensate, an unrefined product with qualities similar to diesel) so that it 'flows', enabling transportation via a pipeline. Bitumen is extremely heavy and sticky.<sup>12</sup>

Unconventional heavy petroleum products pose significant recovery challenges that may not have been sufficiently addressed by response agencies. There are lessons to be learned from the on-going response challenges associated with the July 26, 2010 spill of diluted bitumen into the

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<sup>9</sup> [http://www.nws.usace.army.mil/PublicMenu/documents/REG/ BP Dock\\_Scoping\\_Report\\_Final\\_\(10-25-2010\).pdf](http://www.nws.usace.army.mil/PublicMenu/documents/REG/ BP Dock_Scoping_Report_Final_(10-25-2010).pdf)

<sup>10</sup> For more information see page 234 of the [April 2011 Final Project Report of the Stakeholder Workgroup Review of Planning and Response Capabilities for a Marine Oil Spill on the U.S./Canadian Transboundary Areas of the Pacific Coast](#), sponsored by the Pacific States/British Columbia Oil Spill Task Force.

<sup>11</sup> See <http://www.itopf.com/spill-response/clean-up-and-response/containment-and-recovery/>

<sup>12</sup> A chart showing the high adhesion rate of Cold-Lake bitumen condensate is available in a technical data report prepared by SL Ross for the Enbridge Northern Gateway Project. See page 3-16 and 3-17 of the report at: [http://www.northerngateway.ca/files/tdr/Risk%20Technical%20Data%20Reports/Properties%20and%20Fate%20from%20Spills%20at%20CCAA\\_TDR.pdf](http://www.northerngateway.ca/files/tdr/Risk%20Technical%20Data%20Reports/Properties%20and%20Fate%20from%20Spills%20at%20CCAA_TDR.pdf)

Kalamazoo River in Michigan, which resulted in first responder challenges due to air quality problems and difficulty tracking and recovering the submerged bitumen.<sup>13,14</sup>

Unfortunately the actual shipped amounts of diluted bitumen are confidential, for commercial reasons, making risk assessments and spill response capacity planning difficult.

An additional area of concern is that there has been insufficient notice to Salish Sea communities that the Trans Mountain Pipeline Firm Service Application (RH-2-2011) is before the National Energy Board.

There has also been a lack of consultation with community members by all regulators about issues and risks associated with the dramatic increase in tanker and oil barge traffic from Westridge marine terminals over the last five years. We are disappointed that the recent increase in tanker and barge traffic from Westridge marine terminal did not prompt Transport Canada and/or the National Energy Board to require the surveys, studies, risk assessments and contingency planning typically included in a Transport Canada's voluntary *TERMPOL* Review Process<sup>15</sup>, and the release of all resulting documents to the public.

### **Our Requests:**

**Request 1:** That the NEB not permit any more committed capacity to the Westridge marine terminal until a thorough assessment of marine risks from tanker and oil barge traffic is complete and regulatory agencies and companies meet all the requirements identified in that assessment, particularly with regard to risk reduction and oil spill response.

Any NEB decisions about assigning committed capacity to the Westridge marine terminal should be made in the context of marine safety. It is our position that the NEB should not make any decisions that could increase the number or size of tankers and oil barges until it has sufficient evidence, shared publicly, that the resulting committed levels of tanker traffic are safe, given projected shipping volume increases, and that the strongest available risk mitigation measures are in place to protect the Salish Sea.

**Request 2:** That, when making decisions about the Trans Mountain Pipeline Firm Service application, the NEB consider the consequence of its pipeline decisions beyond the dock terminal.

**Request 3:** That the NEB review of the Trans Mountain Pipeline application facilitate full and meaningful involvement by coastal communities and First Nations, by extending the deadlines for input, advertising in coastal newspapers, and holding accessible public information sessions in Salish Sea communities; require a rigorous assessment of the efficacy of tracking and spill response technology for unconventional oil, and the effects unconventional oil would have on representative ecosystems of the Salish Sea; and consider international implications and transboundary response issues as identified in the April 2011 Final Project Report of the Stakeholder Workgroup Review of Planning and Response Capabilities for a Marine Oil Spill on the U.S./Canadian Transboundary Areas of the Pacific Coast, sponsored by the Pacific States/British Columbia Oil Spill Task Force.<sup>16</sup>

The NEB describes its responsibilities as follows: "When required, the Board conducts studies or research into energy matters to meet its regulatory responsibilities. The Board may also hold inquiries on its own initiative, when appropriate. With this knowledge and expertise, the Board reports to and advises the Minister of Natural Resources on energy issues."<sup>17</sup> Given this statement and that the "Board is responsible for ensuring that energy supplies are connected to

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<sup>13</sup> <http://www.enbridge.com/AboutEnbridge/CorporateSocialResponsibility/Environment/MichiganSpill.aspx>

<sup>14</sup> <http://www.epa.gov/enbridgespill/>

<sup>15</sup> <http://www.tc.gc.ca/eng/marinesafety/tp-tp743-menu-655.htm>

<sup>16</sup> [http://www.oilspilltaskforce.org/docs/notes\\_reports/Final\\_US\\_Canada\\_Transboundary\\_Project\\_Report.pdf](http://www.oilspilltaskforce.org/docs/notes_reports/Final_US_Canada_Transboundary_Project_Report.pdf)

<sup>17</sup> <http://www.neb-one.gc.ca/clf-nsi/rthnb/whwrndrgvrnnc/rspnsblt-eng.html>

consumers in a safe and responsible way”,<sup>18</sup> we request that, in the event that the Board chooses not to require the above studies by the applicant, the Board undertakes the needed research.

**Request 4:** That, should the NEB permit the requested committed capacity to Westridge marine terminal and permit implementation of Firm Service on the Trans Mountain pipeline system with respect to Westridge marine terminal deliveries, approval be conditional so that regulators can impose ceilings and/or reductions in the amount of petroleum product shipped and impose restrictions on the types of petroleum products shipped. These conditions are necessary to allow regulators the ability to respond to marine safety/oil spill preparedness concerns. The public interest in environmental safety must take precedence over the potential corporate profits created by guaranteed volumes and unconditional contracts.

**Request 5:** That, for any future applications affecting the amount and types of oil shipped in the Salish Sea, the National Energy Board add the Victoria Times Colonist, the Island Tides and the Bowen Island Undercurrent to its list of publications that applicants must use to provide public notice.

In conclusion, we would be deeply concerned about a decision of the NEB that would facilitate any increase in the volume of petroleum product shipped from Westridge marine terminal prior to full consultation with affected communities and consideration of current and comprehensive risk assessments of the decision.

Thank you for your attention to our concerns.

Sincerely,



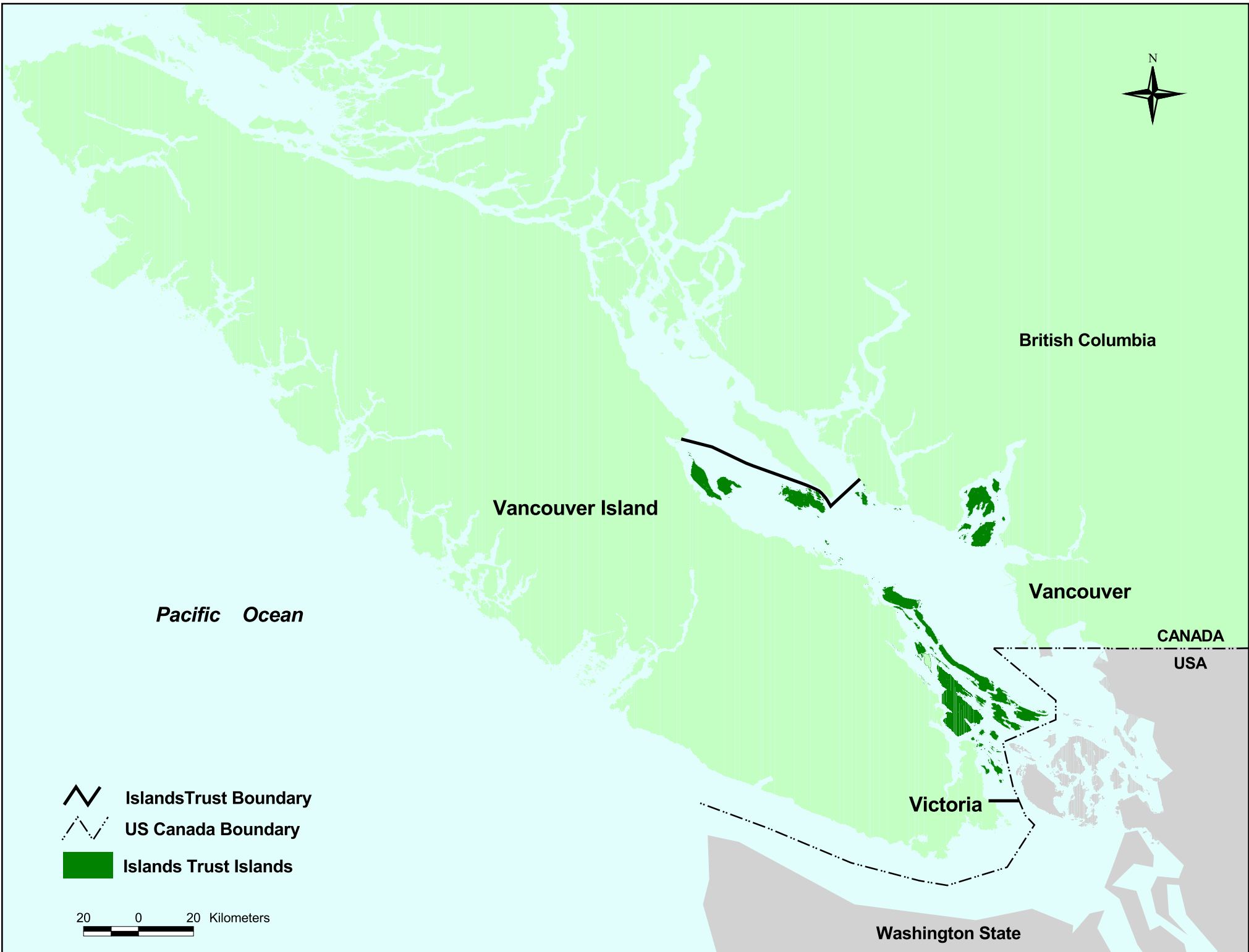
Sheila Malcolmson  
Chair, Islands Trust Council

cc: Islands Trust Council  
Minister of Transportation, Infrastructure and Communities  
Minister of Natural Resources Canada  
Minister of Environment  
Minister of Fisheries and Oceans  
BC Minister of Environment  
BC Minister of Attorney General  
Trans Mountain Pipeline ULC  
Islands Trust Area First Nations  
Association of Vancouver Island and Coastal Community members  
Port Cities Committee of Greater Vancouver Regional District  
Bowen Island Municipality  
San Juan County Council  
Islands Trust website

Attach: 1. Map of Islands Trust Area  
2. Appendix IV: Descriptions of the CANUSDIX and CANUSPAC Transboundary Areas, *The Stakeholder Workgroup Review of Planning and Response Capabilities for a Marine Oil Spill on the U.S./Canadian Transboundary Areas of the Pacific Coast Project Report*, April 2011, p 233 – 243.  
3. *BP Cherry Point Refinery Marine Terminal North Wing Extension Environmental Impact Statement (EIS)*, prepared for U.S. Army Corps of Engineers, Seattle District, November 2010.

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<sup>18</sup> <http://www.neb-one.gc.ca/clf-nsi/rsftyndthnvrnmnt/nvrnmnt/nvrnmnt-eng.html>



## NOTE:

In order to save paper and reduce file size we have removed attachments two and three from this version of the letter.

These documents can be viewed online at the addresses below:

Appendix IV: Descriptions of the CANUSDIX and CANUSPAC Transboundary Areas, *The Stakeholder Workgroup Review of Planning and Response Capabilities for a Marine Oil Spill on the U.S./Canadian Transboundary Areas of the Pacific Coast Project Report*, April 2011, p 233 – 243.

- [http://www.oilspilltaskforce.org/docs/notes\\_reports/Final\\_US\\_Canada\\_Transboundary\\_Project\\_Report.pdf](http://www.oilspilltaskforce.org/docs/notes_reports/Final_US_Canada_Transboundary_Project_Report.pdf)

*BP Cherry Point Refinery Marine Terminal North Wing Extension Environmental Impact Statement (EIS)*, prepared for U.S. Army Corps of Engineers, Seattle District, November 2010.

- [http://www.nws.usace.army.mil/PublicMenu/documents/REG/BP\\_Dock\\_Scoping\\_Report\\_Final\\_\(10-25-2010\).pdf](http://www.nws.usace.army.mil/PublicMenu/documents/REG/BP_Dock_Scoping_Report_Final_(10-25-2010).pdf)