

Enbridge Northern Gateway Project Joint Review Panel
NEB File No. OF-Fac-Oil-N304-2010-01 01
OH-4-2011
NOTICE OF MOTION# 24
November 13, 2013

Name of the person bringing the motion

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Decision or order requested

To include as evidence the *Recovery Strategy for the North Pacific Humpback Whale (Megaptera novaeangliae) in Canada*¹ released in October 21, 2013 by the Department of Fisheries and Oceans².

Date submitted

November 13, 2013

Signature

PRINT NAME

1 http://www.sararegistry.gc.ca/virtual_sara/files/plans/rs_rb_pac_nord_hbw_1013_e.pdf

2 DFO

Statement of Facts

1. Rule 44(3) of the NEB Rules of Practices and Procedures establishes that “For the purposes of subsection (2), unless otherwise determined by the Board, an original proceeding is considered to be closed
 - (a) in the case of an oral hearing, at the end of the final argument; and
 - (b) in the case of a written hearing, on the close of business for the Board on the later of
 - (i) the last date for filing of written evidence, and
 - (ii) the last date for filing argument.
2. While officially the original proceeding closed on June 24, 2013, by stating “unless otherwise determined by the Board”, rule 44(3) allows the Board to override the final closure.
3. I submit that the Board should override the final closure and include the *Recovery Strategy for the North Pacific Humpback Whale (Megaptera novaeangliae) in Canada*³, October 21, 2013 by DFO which should be treated as “late evidence”, and included in the overall evidence leading to the decision by the JRP on the application for the Northern Gateway pipeline for the reasons described in §7 below.
4. Section 4 of the Hearing Order allows the Panel to approve the submission of late evidence based on six factors:
 - 1) How the proposed project will impact the participant;
 - 2) The reason why the deadline was not met;
 - 3) Whether the submission is likely to assist the Panel
 - 4) Whether similar submissions have been, or could be, made by others;
 - 5) How other parties could be disadvantaged as a result of the late submission; and
 - 6) Any other relevant considerations.

5. How the proposed Project will impact the participant

The proposed Project will incur risks to all those living in the Bulkley Valley, including myself who has resided there since 1995. The Bulkley River is in actuality the furthering of the Morice River which is proposed to be crossed by the two pipelines, as well as many of its tributaries. There will hardly be any benefit from the Project for the residents of the Bulkley Valley past the construction period, while our lifestyle, recreation, fishery and wildlife values are threatened by the Project. I personally depend on the local salmon for food.

6. Reason why the deadline was not met

The deadline was not met because those documents were only released last month on October 21, 2013 by DFO.

7. Whether the submission is likely to assist the Panel

This document is extremely important to evaluate the risks of the Project.

- The North Pacific Humpback Whale was listed as threatened under SARA in January 2005
- *At present, there is insufficient information to identify other areas of critical habitat or to provide further details on the features and attributes present within the boundaries of identified critical habitat*⁴.

It is important for the Panel to understand the very significant gap of information regarding the

3 http://www.sararegistry.gc.ca/virtual_sara/files/plans/rs_rb_pac_nord_hbw_1013_e.pdf

4 http://www.sararegistry.gc.ca/virtual_sara/files/plans/rs_rb_pac_nord_hbw_1013_e.pdf p.iv

location, features and attributes of the Humpback Whales' critical habitat. Three of the four critical known habitats are on the proposed tanker routes⁵, and the Recovery Strategy acknowledges that other areas have not been identified. Without such information, it is impossible to assess the potential effects of the marine transport of bitumen on this endangered species.

- *Activities likely to destroy or degrade critical habitat include **vessel traffic, toxic spills, overfishing, seismic exploration, sonar and pile driving** (i.e., activities that cause acoustic disturbance at levels that may affect foraging or communication, or result in the displacement of whales)*⁶.

The report clearly identifies vessel traffic and toxic spills, which are associated with the Project as potential causes for destruction or degradation of the Humpback Whales' critical habitat.

- *A schedule of studies has been included to address uncertainties and provide further details on the critical habitat feature(s), as well as identify additional areas of critical habitat. It is anticipated that results from these studies will also assist in development of relevant protection measures for the critical habitat feature(s)*⁷.

In short, there is insufficient information to develop relevant protection measures. All studies are planned for the period 2011-2016⁸, meaning their results will not be available before decision. The Panel must consider this significant risk to an endangered listed species for which no meaningful protection measure can be offered against the risks associated with the Project.

8. Whether similar submissions have been, or could be, made by others

No similar submission has been made by others, but I cannot predict if others will not see fit to do so.

9. Other parties could be disadvantaged as a result of the late submission

I do not foresee any party being disadvantaged as the result of this submission which is only late because of its late release, after official closure of the proceedings.

Grounds for request

10. The Recovery Strategy for Humpback Whales, released in October 2013 by DFO, identified serious gaps of knowledge regarding their critical habitat put at risk by the Project.
11. The Strategy only offers a Schedule of Studies to assist in developing relevant protection measures. However, the results of such studies will not be available prior to the Panel's issuance of its recommendations.
12. The Panel must take into consideration that there is not enough information to propose any meaningful protection measures.

Decision or order requested

13. To include as evidence the *Recovery Strategy for the North Pacific Humpback Whale (Megaptera novaeangliae) in Canada*⁹ released in October 21, 2013 by DFO.

5 http://www.sararegistry.gc.ca/virtual_sara/files/plans/rs_rb_pac_nord_hbw_1013_e.pdf Adobe p. 43 Figure 4

6 Ibid

7 Ibid

8 http://www.sararegistry.gc.ca/virtual_sara/files/plans/rs_rb_pac_nord_hbw_1013_e.pdf Adobe p. 47 Table 4

9 http://www.sararegistry.gc.ca/virtual_sara/files/plans/rs_rb_pac_nord_hbw_1013_e.pdf