MAKAH TRIBAL COUNCIL
P.O. BOX 115 • NEAH BAY, WA 98357 • 360-645-2201

IN REPLY REFER TO:

Gateway Pacific Terminal/Custer Spur EIS
c/o CH2M HILL
1100 112th Avenue NE Suite 400
Bellevue, WA 98004
email address: comments@eisgatewaypacificwa.gov

January 21, 2013

RE: Scoping Comments on the Gateway Pacific Coal Export Terminal at Cherry Point

The Makah Tribal Council (MTC) appreciates the opportunity to provide the following scoping comments on the proposal to build the Gateway coal export terminal at Cherry Point, Washington.

For the Makah Indian Tribe, indigenous to the Cape Flattery region in Washington State, protection of the environment is essential to our economy. The sustainable utilization of the environment is fundamental to the Makah Indian Tribe's ability to continue to exercise of our way of life and to the federal government's meeting its Trust Responsibility obligation to the Makah Tribe per the 1855 Treaty of Neah Bay.

Our treaty with the federal government bestows a mutual Trust Responsibility between the Federal government and the MTC to protect our tribal natural resources. Our treaty reserves the inherent sovereign authority of the Makah Indian Tribe through the MTC to act as a resource trustee in regard to the management of ocean resources within our treaty area. The US Supreme Court has asserted we are to manage the marine resources within our treaty area in common with the State of Washington. Moreover, our spiritual beliefs assert that we are inextricably connected to the environment. Attaining that level of spiritual understanding requires that we assume the responsibility of the resources in our Chiefs' or our Treaty Area.

The MTC feels strongly that the scope of this EIS needs to recognize and account for the sovereign status our treaty provides us concerning our resource protection interests. The MTC believes it is of vital importance that the EIS include analysis of risks associated with the construction of a new terminal sited in critical salmon and herring habitat; the shipping of coal through our treaty area; and the impact of the burning of coal has on our Treaty protected resources.

The MTC recognizes our treaty resources are at risk of being exposed to the negative effects of oil spills having already been subject to over 1.5 million gallons of oil spilled in our Treaty Area. We understand that this risk as present and ongoing due to the combined vessel traffic bound to Canada's largest port (Vancouver, BC) and the United State's 3rd largest port complex (Seattle/Tacoma) which passes through our Treaty

Area. The significant increase in vessel traffic posed by this project must be considered in this context.

Specifically, we ask that the EIS evaluate the cumulative effects of vessel traffic on the likelihood of an oil spill in our treaty area associated with this project as well as the other coal terminals projects seeking permits from the Army Corps of Engineers (ACOE) in the Pacific Northwest. We believe the EIS should not only address the changes in oil spill risk from the Gateway project on our Treaty Area but also the cumulative risk of the various coal projects on such areas as Unimak Pass where most of the associated vessel traffic will transit enroute to China. An oil spill in the Unimak Pass region could significantly impact our treaty protected salmon resources that spend a significant portion of their life history in the Gulf of Alaska.

The impacts on vessel traffic should also address projects being developed in Canada such as the tripling of the Kinder Morgan oil pipeline capacity servicing the Vancouver, BC terminal and the associated tanker traffic. It should also address the expansions of Canada's Pacific NW regional coal and container exports.

The vessel traffic study being undertaken by Glosten and Associates for this project may not be sufficient to address our interests in that it has been scoped without public review and the methodology is unpublished. In its place we strongly recommend the ACOE mandate the project proponents to contribute to the vessel traffic study being lead by investigators at George Washington University. This work is being funded by the MTC and the Puget Sound Partnership and is being conducted in cooperation with the Puget Sound Harbor Safety Committee (see attached).

The EIS should also evaluate climate related impacts such as ocean warming and acidification, which are already affecting our treaty resources. This scientific reality is compounded by the federal government's difficulty in providing a coordinated response to these challenges while accounting for our Treaty Rights. When conducting the cost benefit analysis for this project there must be an appropriate accounting for the cost to the marine environment and those business, cultures and treaties dependent on an intact marine ecosystem. While we support efforts to develop a vibrant economy, it must not come at the cost of future generations.

The sea is our country and we look forward to strengthening our relationship with the US Army Corps of Engineers and the Washington State Department of Ecology to assure the sustainable co-management of the marine environment. To that end we seek formal government-to-government consultation on this project prior to any final scoping decisions being made.

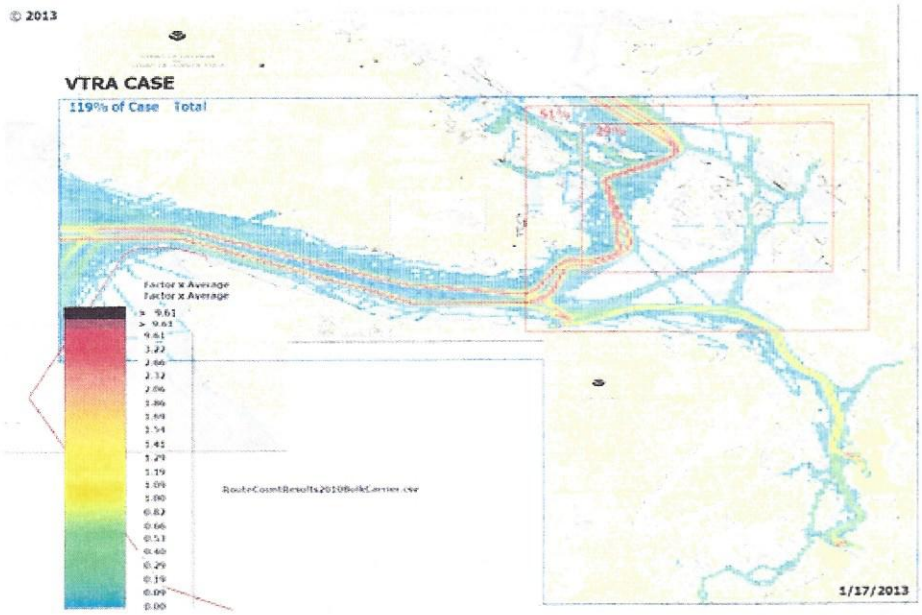
Sincerely,

Timothy J. Greene Sr., Chairman
Makah Tribal Council

Makah Tribal Council Technical Comments

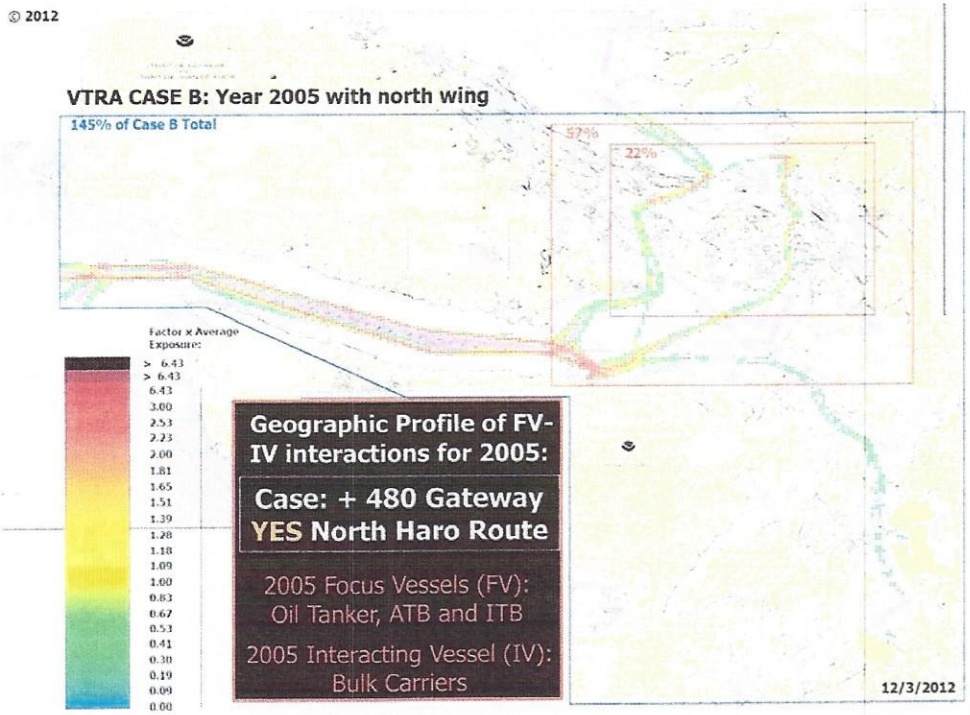
In an effort to demonstrate the utility of the Vessel Traffic Risk Assessment (VTRA) conducted by Rene Van Dorp at George Washington University we have summarized some of the preliminary findings from the analysis below. http://www.seas.gwu.edu/~dorpjr/tab4/publications_VTRA_Update.html.

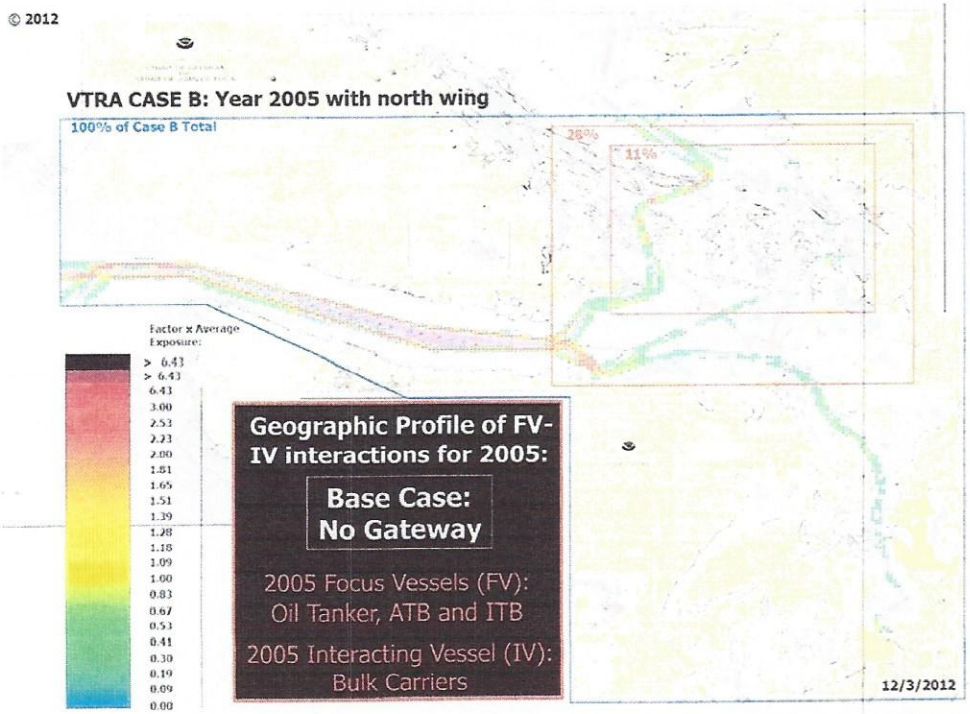
2010 VTRA STUDY – DRAFT BULK CARRIER TRAFFIC DENSITY



2005 VTRA STUDY – BULK CARRIER TRAFFIC DENSITY

1) The first two figures above show that between 2005-2010 the density of bulk vessel traffic through the entire study area has increase 19%. Density is a reflection of the amount of time a vessel type occurs in the waterway. This increase was distributed accordingly:
    - > 24% in western Juan de Fuca Strait.
    - > 13% in eastern Juan de Fuca Strait and all waterways north.
    - > 7% in the waterways just surrounding the San Juan Islands.





2) The next two figures above show how by adding 480 additional bulk carriers calling on the proposed Gateway Coal Terminal at Cherry Point to the 2005 traffic levels the interactions between the focus vessels (tankers, ATBs, ITBs) and the interacting vessels (bulk carriers) increases by 45%. These interactions are distributed accordingly:
    - > 16% in western Juan de Fuca Strait.
    - > 29% in eastern Juan de Fuca Strait and all waterways north.
    - > 11% in the waterways just surrounding the San Juan Islands.

These results indicate that the addition of the 480 vessels calling on the proposed Gateway terminal doubles the amount of vessel interactions in the San Juan Islands and eastern Juan de Fuca region and increases the number of interaction by a quarter in western Juan de Fuca. While not every interaction (the likelihood of two vessels colliding within 5 minutes) will result in an accident, the significant increase of that potential needs to be fully considered and adequately mitigated in the EIS.

We also recommend the study not only address the additional number of vessels being drawn to the region for this trade but the accident profile of these uniquely high risk vessels (see IMO report below). The bulk carriers capable of calling on the proposed Gateway Pacific Coal Terminal are twice the size of tankers allowed to call on these waters by federal law, can carry up to 2 million gallons of bunker fuel and have the most worrisome safety record of all commercial cargo vessels. In addition, these vessels are not required to have double hulls or tug escorts as do tankers.

These ships in international trade with China are not required to have English-speaking pilots until they travel 70 miles through our Treaty Area in Juan de Fuca Strait. As a result our fishing fleet is put at increasing risk of a collision with the vessels due to their inability to communicate with the captains to make passing arrangements. Furthermore, these vessels will be using anchorages shared by oil tankers in the region adding to the risk of collisions and disturbance of important crab habitat.

We are aware of two incidents involving coal carriers in NW waters that need to be incorporated into any analysis of the risk posed by the vessels. In July 19, 1997, the 736-foot coal carrier, *Continental Spirit*, lost power with 680 tons of fuel on board and drifted for an hour before dropping anchor within 500 yards of a reef off Patos Island (Journal of the San Juan Islands 7/30/1977). On Dec. 7, 2012, the 900 foot, Panama-registered coal carrier, *Cape Apricot,* crashed into a causeway, destroying about 100 meters of the structure, including a coal conveyer system (Vancouver Sun 12/10/12).

International Maritime Organization (IMO) 2008. Bulk Carrier Casualty Report International Association of Dry Cargo Shipowners (INTERCARGO). Maritime Safet Committee 84th session Agenda item 23, MSC 84/INF.12, 6 March.

ANALYSIS OF TOTAL LOSSES

	In 2007	In 10-year period 1998-2007
Lives	39	318
Ship losses	8	86

Trends
(Figures are rounded)

	Lives Lost	Ships Lost
1990 – 1999	78	14.5
1991 – 2000	74	13.5
1992 – 2001	62	11.6
1993 – 2002	60	10.9
1994 – 2003	52	10.5
1995 – 2004	42	9.6
1996 – 2005	38	9.7
1997 – 2006	37	8.9
1998 – 2007	32	8.6

Size of vessels lost

	In 2007	In 10-year period 1998-2007
Handysize	5	52
Handymax	2	13
Panamax	0	12
Capesize	0	9

Age of casualty

	In 2007	In 10-year period 1998-2007
0 – 4 years	0	3
5 – 9 years	0	6
10 – 14 years	1	4
15 – 19 years	0	14
20 – 24 years	3	29
25 + years	4	30

Cause of incident

	In 2007	In 10-year period 1998-2007
Structural	0	12
Fire and Explosion	0	10
Machinery Failure	1	6