



1. Supplemental response to Indigenous groups

1.1 Preface

Overview of the section

This section provides responses to the comments by Indigenous groups to the Impact Assessment Agency of Canada (IAAC) as part of the public comment period that had not been posted to the public registry in time for consideration in Part One of the Vancouver Fraser Port Authority's (port authority) response, submitted April 22, 2022 ([CIAR #3546](#)).

Sections 1.2 through **1.4** of this submission include the port authority's responses to three submissions representing seven Indigenous groups. These Indigenous groups are as follows:

- The First Nations of the Maa-nulth Treaty Society (representing Huu-ay-aht First Nations, Ka:'yu:'k't'h'/Che:k'tles7et'h First Nations, Toquaht Nation, Uchucklesaht Tribe, and Ucluelet First Nation)
- Seabird Island Band
- Snuneymuxw First Nation

The port authority's approach to responding to the submissions of Indigenous groups within this supplemental response follows the same approach laid out in Section 2.5.1 of Part One of the port authority's submission (April 22, 2022, [CIAR #3546](#)). In **Sections 1.2** through **1.4** below, the port authority provides an overall response to each submission, with specific responses to comments on specific draft conditions provided in **Appendix A**. Consistent with the approach taken in Section 2.5 of Part One of the port authority's submission, the port authority has only responded to comments where the port authority viewed that a response would be helpful to IAAC. Please refer to Section 2.5.1 of Part One of the port authority's submission for full details on the port authority's approach to responding to the submissions of Indigenous groups.

1.2 Response to the First Nations of the Maa-nulth Treaty Society

The five First Nations of the Maa-nulth Treaty Society (Maa-nulth First Nations), as listed above in **Section 1.1**, submitted a letter regarding the port authority's response to the minister's information request (IR) and IAAC's draft conditions ([CIAR #3544](#)). Maa-nulth First Nations stated in their submission that they had previously provided the port authority with comments on the port authority's IR response, which the port authority incorporated into the IR response as appropriate, and that they have no further comments on that IR response.

Maa-nulth First Nations' comments on specific draft conditions are largely requests for changes in the scope of the draft conditions. These draft conditions include those related to the definition of Indigenous groups (1.24) and the scope of consultation requirements for certain conditions based on those definitions (i.e., 2.13, 3.2-3.3, 7.1-7.2, 8.1, 8.4-8.6, 8.9, 10.2, 10.14, 10.17-10.18, 11, 13.1). The port authority takes no position on these requests.

Other requested changes in the scope of conditions by Maa-nulth First Nations include those related to greenhouse gas emissions (3.2); marine mammals (8.3), and in particular expanding the application of

vessel slowdowns; the process identified in socio-economic conditions for commercial interests (13.3); Indigenous monitors (15.1), and in particular the timeframe for retention of those monitors; and the scope of the area for the marine shipping component of the project and its implications for draft conditions based on the definition of that area (e.g., 8.4, 8.9, 19.1). See Table 1 of **Appendix A** of this submission for Maa-nulth First Nations' comments on specific draft conditions and the port authority's responses to those comments, where the port authority felt a response would be helpful to IAAC.

The port authority acknowledges that Maa-nulth First Nations expressed support for aspects of draft condition 8.3 relating to the Enhancing Cetacean Habitat and Observation (ECHO) Program and the port authority's proposal to add a new condition for a marine shipping follow-up program within section 12 of the draft conditions.

The port authority also acknowledges Maa-nulth First Nations' request for accommodation measures from the Crown, and in that context, a specific request for a comparative analysis of the Roberts Bank Terminal 2 (RBT2) Project and the proposed Deltaport Berth 4 Expansion Project before a decision is made on either project. The matter of timing of decision-making for the RBT2 Project is addressed in Section 2.3.7 of Part One of the port authority's submission to IAAC (April 22, 2022, [CIAR #3546](#)).

The port authority notes that it has a mutual benefits agreement in place with Maa-nulth First Nations in relation to the RBT2 Project and that Maa-nulth First Nations has provided a letter indicating their consent ([CIAR #2073](#)) to the granting of any authorization or permit necessary for the project.

1.3 Response to Seabird Island Band

Seabird Island Band submitted a letter regarding the port authority's IR response and IAAC's draft conditions ([CIAR #3545](#)). The letter reviews Seabird Island Band's perspectives on the potential impacts of the project. Seabird Island Band's letter does not include direct comments on specific draft conditions, so there are no comments from Seabird Island Band included in **Appendix A** of this submission.

The port authority acknowledges Seabird Island Band's general comments related to the definition of "Indigenous groups" and scope of consultation, in relation to which the port authority takes no position.

The port authority also acknowledges Seabird Island Band's request for project-specific offsets specifically targeting Maria Slough Chinook salmon, as well as comments related to adherence to mitigation measures identified for fish and marine life, including Seabird Island Band's view that the proposed breach should be provided at the marine terminal location to allow fish passage and to mitigate the disruption to juvenile Chinook salmon migration.

The port authority notes that it responded to Seabird Island Band in April 2022 in relation to the concern regarding Maria Slough Chinook. In that response, the port authority explained that it has conducted an extensive study and assessment on the potential effects of RBT2 on salmon, and juvenile Chinook salmon in particular, and that this work determined that the project will not interact with and will not adversely affect juvenile Chinook salmon that are stream-type, including Maria Slough Chinook salmon, as they do not rear within the estuary. As there will be no interaction between stream-type Chinook and the project, offsetting is therefore not proposed.

The port authority also notes that consultation with Seabird Island Band, as an Indigenous group listed in the definition of Indigenous groups within draft condition 1.23, will be required in relation to the fish and fish habitat conditions, including but not limited to those related to the offsetting plan(s), potential effects of offsetting measures, and follow-up program element (7.11, 7.12, 7.13), as well as the follow-up program element specific to juvenile salmon (7.14).

The port authority acknowledges Seabird Island Band's comments regarding the need for an emergency response plan for train incidents and studies on local road and rail traffic in their community. The scope of

the project does not include upland road and rail components. As discussed in Section 3.1 of Part One of the port authority's submission, conditions must be related to the environmental effects of the project.

With regard to Seabird Island Band's comments that there is a lack of articulated benefits and an Indigenous procurement policy, and that clarification is needed on specific training or employment opportunities, the port authority refers to Section 2.5.8 in Part One of the port authority's submission, which describes the port authority's commitment to an Indigenous Training, Employment, and Procurement Plan (ITEPP), which will be developed in consultation with Indigenous groups. Seabird Island Band would be eligible to participate in the project's ITEPP.

1.4 Response to Snuneymuxw First Nation

Snuneymuxw First Nation (Snuneymuxw) submitted a letter with two appendices, one containing comments on IAAC's draft conditions and the other containing comments on the port authority's IR response ([CIAR #3540](#)).

Snuneymuxw provided comments across several sections of the draft conditions in a table of numbered comments, including those related to the definition of Indigenous groups (1.22), in relation to which the port authority takes no position: general conditions (2.3-2.4, 2.5.4-2.5.5, 2.9-2.10, 2.16-2.17), primarily in relation to consultation and follow-up program requirements; air quality and greenhouse gas emissions (3.4.2); atmospheric noise and vibration (4.3); light (5.1, 5.2); fish and fish habitat (7.3, 7.7, 7.14); Indigenous monitors (15.1); and accidents and malfunctions (19.6-19.7).

Snuneymuxw's comments on the above-noted draft conditions generally pertain to requests for inclusion in consultation related to specific conditions; requests for capacity funding to support their participation in consultation; and requests to add Aboriginal and treaty rights-related content to specific conditions. See Table 2 of **Appendix A** of this submission for Snuneymuxw's comments on specific draft conditions and the port authority's response to those comments, where the port authority felt a response would be helpful to IAAC.

The port authority acknowledges Snuneymuxw's general comments on the draft conditions regarding the monitoring of potential impacts and cumulative impacts of the project on the exercise of Aboriginal and treaty rights, and specifically Snuneymuxw's view that the draft conditions do not currently account for mitigation measures or follow-up programs in relation to either. The port authority notes, in this regard, the following perspective of the review panel (section 18, p. 319, [CIAR #2062](#)):

“Throughout the [review panel] report, the Panel has made recommendations on the biophysical environmental components, as well as, with respect to Indigenous peoples, on current use of lands and resources for traditional purposes, physical and cultural heritage and any place, structure or thing of historical and archaeological importance, and health and socio-economic conditions. These recommendations are made to mitigate or avoid potential environmental effects of the Project, which, in turn, could avoid or mitigate Project impacts on Aboriginal or Treaty rights.”

As noted in Section 2.1.4 of Part One of the port authority's submission, the potential effects and cumulative effects of the project are mitigable both by the measures required by the conditions that would be imposed on the proponent and by the actions that are being taken, will be taken, and can be taken by the Government of Canada, as outlined in the draft Whole of Government Response to the recommendations of the review panel.

As outlined in Section 3.1 of Part One of the port authority's submission, conditions imposed on the proponent must be related to the environmental effects of the project.

Snuneymuxw's comments on the port authority's IR response were provided in a table of numbered comments and pertain to IR2020-1.1, IR2020-1.2, IR2020-2.1, IR2020-2.2, IR2020-2.3, IR2020-3, IR2020-5, IR2020-6, and IR2020-7. The port authority acknowledges Snuneymuxw's general comment that the IR response does not reflect Snuneymuxw's input given that Snuneymuxw had not been identified by IAAC for consultation at the time the IR response was developed. As with Snuneymuxw's feedback on the draft conditions, the overall nature of the comments on the IR response is related to Snuneymuxw's request to be included in consultation related to the project and to be provided with capacity funding to support their participation, with only a few seeking specific clarification of information provided by the port authority within the IR response (i.e., #4, #9, #16, #17), one (#7) addressing cumulative effects (discussed above), and two (#18 and #28) providing observations on the assessment. The port authority is of the view that Snuneymuxw's requests for specific clarification on that information and observations on the assessment would not require changes to the draft conditions. The port authority has contacted Snuneymuxw for a meeting with IAAC and the B.C. Environmental Assessment Office to discuss the project. The port authority would provide the requested clarifications at that meeting.

Appendix A – Response to comments on conditions by Indigenous Groups

Preface

Submissions from some Indigenous groups included specific suggestions to revise or add to the draft conditions. The port authority has reviewed these suggestions to evaluate the technical and economic feasibility of any suggested changes, in addition to considering other relevant factors, such as the key principles that must underlie the conditions, as described in Section 3.1 of Part One of the port authority's submission (April 22, 2022, [CIAR #3546](#)). The port authority's responses to suggestions by Indigenous groups on specific draft conditions are included in nation-specific tables within this appendix, as follows:

- Table 1 - Response to comments by Maa-nulth First Nations
- Table 2 – Response to comments by Snuneymuxw First Nation

The port authority notes that it has only included in this appendix comments from Indigenous groups where the port authority felt a response from the project proponent would be helpful to IAAC. The port authority has not included Indigenous group comments or responses on specific conditions for which the port authority has no comment, or for which the port authority takes no position.

For comments included in this appendix (where a response may be helpful to IAAC), the port authority has either a) provided a specific response; b) indicated the matter is best addressed through ongoing consultation; or c) indicated the matter is for consideration by IAAC, as the Indigenous group comment is not within the port authority's purview to address.

Table 1 – Response to comments by Maa-nulth First Nations

Posted April 13, 2022. Link: [CIAR #3544](#)

#	Section	Original condition	Comment and suggested amendment	Port authority response
MNFN-4	3.2 – Air Quality and greenhouse gas emissions	<p>The Proponent shall develop, in consultation with Indigenous groups, Environment and Climate Change Canada, British Columbia's Ministry of Environment and Climate Change Strategy and Metro Vancouver, greenhouse gas management plans for construction and operation of the marine terminal, the widened causeway, and the expanded tug basin, to improve energy efficiency and reduce greenhouse gas emissions. The Proponent shall develop each plan prior to the relevant phase of the Designated Project and implement each plan throughout the relevant phase of the Designated Project. The Proponent shall take into account applicable federal, provincial and regional greenhouse gas reduction strategies when developing and implementing the plans. As part of each plan, the Proponent shall:</p>	<p>It is unclear whether the phrase “operation of the marine terminal” is intended to include marine shipping. A plain reading of the phrase would suggest that it includes marine shipping as marine shipping is a necessary component of marine terminal operations. However, Maa-nulth understand the intention is not to include marine shipping as there are some conditions where marine shipping is expressly referenced following the phrase (e.g. condition 13.3). If not intended, the first sentence in condition 3.2 (GHG emissions) should be expanded to include marine shipping. To have a clear understanding of climate change impacts associated with the Project, it is critical that any GHG planning, measures and monitoring include emissions from Project-related vessels. The Port has access to information regarding and means to influence these emissions. They are thus appropriate to include as a Project condition. (Maa-nulth acknowledge that condition 3.2.1 requires the proponent to identify sources of indirect GHG emissions. However, the broader planning requirement should apply to marine shipping.)</p>	<p>The port authority can only implement measures that are within its care and control. As previously indicated to IAAC in the port authority’s response to clarification questions from IAAC, April 22, 2021, the port authority has no statutory authority to require container vessels destined for the terminal to reduce emissions.</p> <p><i>Mitigation through voluntary initiatives and programs</i></p> <p>While the port authority cannot directly require container vessel owners and operators to develop or implement greenhouse gas (GHG) management plans or monitor GHG emissions, mitigating air emissions, including GHG emissions, from container vessels is feasible through voluntary initiatives and programs led or participated in by the port authority. For example, through the port authority’s EcoAction Program, ships can receive discounts on harbour dues by following voluntary best practices that reduce emissions and other environmental impacts. Shipping lines that invest in technologies and practices that meet or exceed regulatory requirements are also eligible for the port authority’s Blue Circle Awards. Marine vessels calling at RBT2 will be eligible to participate in these programs.</p> <p><i>Mitigation through regulation</i></p> <p>Mitigating air emissions, including GHG emissions, from container vessels is feasible through the regulatory authority of other international and federal authorities. Canada is a member of the International Maritime Organization (IMO). The IMO is an organization of seafaring nations that works to develop international conventions, including conventions for the prevention of marine and atmospheric pollution by ocean-going vessels. Under the <i>Canada Shipping Act, 2001</i>, Canada has implemented portions of the International Convention for the Prevention of Pollution from Ships (MARPOL). Annex VI of MARPOL includes requirements for the prevention of air pollution and for energy efficiency and GHG emission reductions. Within Canada, Transport Canada has the statutory authority to establish emission standards for marine vessels. Typically, the rules and regulations established within Canada are aligned with the international rules and standards developed established by the IMO.</p> <p>In its decision approving the Trans Mountain Pipeline ULC application to the National Energy Board (June 18, 2019, Order in Council P.C. 2019-0820), the Governor in Council indicated that the Government of Canada accepted all of the Board’s 16 new recommendations relating to marine shipping, which included “actively supporting the development and implementation of greenhouse gas reduction measures related to marine shipping that would align with the final International Maritime Organization Strategy by year 2023 for reducing greenhouse gas emissions.” It is understood that this would apply to all international vessels calling on RBT2.</p>

#	Section	Original condition	Comment and suggested amendment	Port authority response
				<p>If the Government of Canada deems GHG emission management measures necessary for marine shipping incidental to the project, such measures should be articulated in the Whole of Government Response. In this regard, the port authority notes that the draft Whole of Government Response includes reference to ongoing work by government on the implementation of the IMO Strategy for reduction of GHG emissions from ships, which would be relevant to marine shipping incidental to the RBT2 Project. The port authority supports inclusion of this work in the Whole of Government Response.</p>
<p>MNFN-5</p>	<p>8.3 – Marine Mammals</p>	<p>The Proponent shall require container vessels calling on the Designated Project to participate in the <i>Enhancing Cetacean Habitat and Observation Program</i>, or any future equivalent program, to reduce the potential effects of container vessels calling on the Designated Project on cetacean species. As part of the annual report referred to in condition 2.10, the Proponent shall:</p> <p>8.3.1 – provide, or provide the means to access, reporting of the underwater noise levels measured as part of the <i>Enhancing Cetacean Habitat and Observation Program</i>, or any future equivalent program, throughout operation; and</p> <p>8.3.2 - evaluate, in consultation with Fisheries and Oceans Canada, Transport Canada, Indigenous groups, and Indigenous groups (marine shipping), the effectiveness of the participation of container vessels calling on the Designated Project in the <i>Enhancing Cetacean Habitat and Observation Program</i> in mitigating underwater noise and the risk of fatal vessel strikes to humpback whales (<i>Megaptera novaeangliae</i>) and Southern Resident Killer Whales (<i>Orcinus orca</i>).</p>	<p>Maa-nulth support condition 8.3 requiring Project-related vessels to participate in the Enhanced Cetacean Habitat and Observation (“ECHO”) program and any future equivalent program. However, Maa-nulth ask that the purpose of the condition be amended to reflect a purpose of reducing potential effects on our treaty rights, in addition to potential effects on marine mammals. As you know, the ECHO program recently implemented a vessel slowdown trial at Swiftsure Bank, a key fishing area to Maa-nulth. In addition to mitigating underwater noise and vessel strikes, slowdowns at Swiftsure could help improve our experience and safety exercising out harvesting rights at Swiftsure, as we would have more time to maneuver around and there would be less wake from a slower vessel. If the Port does not intend to continue slowdowns at Swiftsure, we ask that that such slowdowns be made a condition of the Project. We also ask that slowdowns be added at La Perouse Bank, either through the ECHO program or as a Project condition. Like Swiftsure, La Perouse is a key fishing area to Maa-nulth and critical habitat for orcas. Finally, we wish to emphasize that any conservation measures developed by Canada as a result of data collected through the ECHO program must be developed in partnership with Maa-nulth.</p>	<p>The port authority can only implement mandatory speed reductions within its jurisdiction (see DFO’s submission to the public comment period (CIAR #2407, p.47)). The establishment of mandatory speed reductions in the marine shipping area is within the legislative authority of Transport Canada (see Transport Canada’s recent submission (CIAR #2298, p.4); if the Government of Canada considers mandatory speed reductions to be appropriate and necessary to mitigate the effects of marine shipping incidental to the project, its ability to implement that measure should be reflected in the Whole of Government Response.</p> <p>The port authority notes that the initiatives of the Enhancing Cetacean Habitat and Observation (ECHO) Program and/or components of any future equivalent program are expected to evolve/adapt over time as lessons are learned about what measures are effective and what is needed to mitigate the effects of marine shipping. For this reason, specific program initiatives or components and the duration of any specific program initiative or component should not be pre-determined in a condition. The port authority is open to discussing additional potential candidate vessel slowdown areas with Maa-nulth First Nations and other ECHO Program members.</p> <p>The port authority acknowledges Maa-nulth First Nations’ comments on the draft conditions regarding potential impacts on treaty rights. The port authority notes, in this regard, the following perspective of the review panel (section 18, p. 319, CIAR #2062):</p> <p>“Throughout the [review panel] report, the Panel has made recommendations on the biophysical environmental components, as well as, with respect to Indigenous peoples, on current use of lands and resources for traditional purposes, physical and cultural heritage and any place, structure or thing of historical and archaeological importance, and health and socio-economic conditions. These recommendations are made to mitigate or avoid potential environmental effects of the Project, which, in turn, could avoid or mitigate Project impacts on Aboriginal or Treaty rights.”</p> <p>The port authority notes that it has suggested revisions and additions to the draft conditions in part 12, pertaining to the effects of marine shipping incidental to the project, including a follow-up program element, in relation to which Maa-nulth First Nations has expressed support in their submission.</p>

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MNFN-6	8.8 – Marine Mammals	The Proponent shall document Indigenous knowledge it has received and how it was considered in the development and implementation of measures to mitigate effects on Southern Resident Killer Whales (<i>Orcinus orca</i>) throughout all phases of the Designated Project. The Proponent shall respect Indigenous knowledge protocols and shall keep Indigenous knowledge it has received confidential, if requested, and/or if required by legal and regulatory requirements.	It is unclear to Maa-nulth why the consideration and confidentiality of Indigenous knowledge was singled out for condition 8.8 (marine mammals). The principles in this condition should apply generally to all conditions.	This is a clarification matter to be considered by IAAC.
MNFN-7	11 – Communication plan	<p>11.1 - The Proponent shall develop, prior to construction and in consultation Indigenous groups, relevant authorities, and commercial and recreational marine users (including the Area I Crab Fisherman Association and the Lower Fraser Sport Fishing Advisory Committee), a communication plan. The Proponent shall implement the plan during construction and operation. The plan shall include measures applicable to each phase of the Designated Project to provide up-to-date information to Indigenous groups and commercial and recreational marine users about activities related to the construction and operation of the marine terminal, the widened causeway, and the expanded tug basin that may adversely affect access within the local assessment area for land and water use indicated on figure 26-1 of the environmental impact statement. As part of the plan, the Proponent shall include the following:</p> <p>11.1.1 - the type of information that will be communicated to Indigenous groups and commercial and recreational marine users about the nature, location, status and progress of planned and unplanned activities associated with the Designated Project, including:</p> <p>11.1.1.1 - information on navigational closure areas implemented during construction or operation of the Designated Project;</p> <p>11.1.1.2 - vessel traffic schedules for vessels associated with the Designated Project; and</p> <p>11.1.1.3 - procedures for navigational safety and any other measures implemented by the Proponent to mitigate adverse effects to navigation as a result of the Designated Project.</p> <p>11.1.2 - procedures to communicate the information referred to in condition 11.1.1 to Indigenous groups and commercial and recreational marine users, including timing and frequency of distribution of this information;</p> <p>11.1.3 - procedures for Indigenous groups and commercial and recreational marine users to provide feedback to the Proponent on adverse effects related to marine use as result of construction and operation of the marine terminal, the widened causeway, and the expanded tug basin including unanticipated issues and interactions with other users; and</p> <p>11.1.4 - procedures for the Proponent to document and respond in a timely manner to feedback received pursuant to 11.1.3, and to demonstrate how feedback has been addressed.</p>	The communication plan (condition 11) should apply to all Indigenous groups, not just lower mainland Indigenous groups, and not be limited to effects within the local assessment area. Maa-nulth, like lower mainland Indigenous groups, have an interest in timely information regarding construction and operation of the Project, including the marine shipping component.	The port authority notes that the communication plan identified in draft condition 11.1 pertains to activities related to the construction and operation of the marine terminal, the widened causeway, and the expanded tug basin that may adversely affect access for land and water use in the areas of those project components.

#	Section	Original condition	Comment and suggested amendment	Port authority response
MNFN-8	13.3 – Health and socio-economic conditions	The Proponent shall develop, prior to construction and in consultation with Tsawwassen First Nation and the Maa-nulth Nations, a process for Tsawwassen First Nation and the Maa-nulth Nations to report concerns to the Proponent about any adverse environmental effect caused by the construction and operation of the marine terminal, the widened causeway, and the expanded tug basin and incidental marine shipping activities on their commercial ventures. The Proponent shall implement the process during construction and the first five years of operation. As part of the implementation of the process, the Proponent shall:	Maa-nulth are pleased to see condition 13.3 requiring the Port to develop a process for Maa-nulth to resolve concerns relating to our commercial Interests. However, Maa-nulth submit that the process should apply to all of our Interests, not just our commercial Interests, and should apply for the life of the Project, not just the first five years. Such a broadening is supported by the Review Panel's finding that marine shipping associated with the Project would result in adverse cumulative effects on our current use of lands and resources. Like the Panel found for our neighbors Pacheedaht and Ditidaht, Maa-nulth submit that those effects would be significant given the importance of Swiftsure and La Perouse to our fishing Interests. If condition 13.3 is expanded as requested, perhaps the condition is a better fit within Part 12 (current use). However, Maa-nulth remain concerned with the term current use as our treaty rights are not dependent on current use.	The port authority understands the intent of draft condition 13.3 to be focused specifically on a process to address potential effects on commercial ventures of Maa-nulth First Nations and Tsawwassen First Nation. Other potential effects on Maa-nulth First Nations would be addressed through processes identified in other conditions, including the port authority's proposed draft conditions regarding a marine shipping follow-up program element for current use of lands and resources for traditional purposes (current use), for which Maa-nulth First Nations has expressed support in their submission, and also through the measures for effects of marine shipping to be implemented by the Government of Canada, as outlined in the draft Whole of Government Response. The port authority also notes that the port authority's response to the minister's IR (CIAR #2083) provided updated container vessel forecasts, which clarified that container vessel traffic in the marine shipping area are forecast to be the same with or without the project (see Section 2.2 of Part One of the port authority's submission (CIAR #3546)). The port authority understands the term of this condition to be linked to the time expected to be required for the pattern of container vessel traffic calling at Port of Vancouver terminals to adjust once RBT2 commences operation.
MNFN-10	15.1 – Indigenous Monitors	The Proponent shall retain, prior to construction, the services of Indigenous monitors to observe, record, and report on the implementation of the conditions set out in this document during construction. Prior to retaining the services of Indigenous monitors, the Proponent shall undertake a collaborative process to determine, in consultation with Indigenous groups, the scope, purpose and objectives of the participation of Indigenous monitors and shall provide that information to the Agency prior to construction. As part of that process, the Proponent shall determine:	Condition 15.1 should be amended to require the Port to retain Indigenous monitors for the life of the Project, not just during construction, and to consult with Maa-nulth regarding the retention of those monitors. Maa-nulth should be provided an opportunity to participate any condition monitoring within our territories (e.g. conditions 8.4 and 8.9 regarding marine mammals). We have long been stewards within our territories, and we all have guardian programs in place with current and growing capacity to undertake such monitoring.	The port authority understands the intent of draft condition 15.1 to be focused specifically on monitoring the implementation of conditions during the construction phase. The participation of Indigenous groups in follow-up programs, including the conduct of monitoring, that would be carried out during the operation phase is contemplated in draft condition 2.9 and would be determined in consultation with each group in accordance with that condition.
MNFN-11	17.1 – Indigenous advisory committee	The Proponent shall establish, prior to construction and in consultation with Indigenous groups, and maintain, throughout construction and operation, an Indigenous Advisory Committee (IAC) to support dialogue and issue resolution between the Proponent and Indigenous groups. The Proponent shall invite Indigenous groups to participate in all IAC activities and shall consult participating Indigenous groups on the development of Terms of Reference for the IAC. The Proponent shall make reasonable efforts to come to agreement on the Terms of Reference with participating Indigenous groups. The Proponent shall submit the final Terms of Reference to the Agency prior to construction. As part of the Terms of Reference, the Proponent shall include	The Indigenous Advisory Committee (condition 17.1) should also be broadened to enable Maa-nulth participation. As you are aware, marine shipping Indigenous groups play an active and, in our view, critical role in the Indigenous Advisory Committee for the Trans Mountain Expansion Project. If a similar Committee is created for this Project, Maa-nulth should be provided an opportunity to participate on that Committee.	The port authority notes that the Indigenous Advisory Committee was intended as a working committee related to the construction and operation of the proposed marine terminal, widened causeway, and expanded tug basin for the 16 Indigenous groups with traditional territories or consultation areas that overlap those project components, as identified by IAAC. The port authority is of the view the Indigenous Advisory Committee should focus on engagement with those 16 Indigenous groups and on matters that are within the care and control of the proponent. The port authority notes that the Indigenous Advisory Committee is only one avenue for ongoing consultation on the project, and that Maa-nulth First Nations will continue to be provided with opportunities to raise concerns regarding the project directly with the port authority through ongoing one-on-one and/or multi-group consultation. This includes, for example, consultation on the development and implementation of a marine shipping follow-up program element for current use, which the port authority has proposed for inclusion in part 12 of the draft conditions, and for

#	Section	Original condition	Comment and suggested amendment	Port authority response
				which Maa-nulth First Nations has expressed support in their submission.
MNFN-12	8.4, 8.9 & 19.1 – Marine mammals & Accidents and malfunctions	<p>8.4 – The Proponent shall develop, prior to operations, in consultation with Transport Canada and to the satisfaction of Fisheries and Oceans Canada, a plan to address effects to Southern Resident Killer Whale (<i>Orcinus orca</i>) due to underwater noise produced as a result of the operations of the Designated Project, including both marine shipping and operations at the marine terminal. The Proponent shall implement the plan in consultation with Transport Canada and to the satisfaction of Fisheries and Oceans Canada during operation. As part of the plan, the Proponent shall:</p> <p>8.9 – The Proponent shall develop, prior to construction and in consultation with Fisheries and Oceans Canada, Transport Canada, and Indigenous groups, a follow-up program to verify the accuracy of the environmental assessment as it pertains to changes in levels of underwater noise and associated effects to Southern Resident Killer Whale (<i>Orcinus orca</i>) as a result of operation of the Designated Project. The Proponent shall implement the follow-up program in accordance with conditions 2.5 to 2.9. As part of the follow-up program, the Proponent shall:</p> <p>19.1 - The Proponent shall take all reasonable measures to prevent accidents and malfunctions associated with the Designated Project that may result in adverse environmental effects and all reasonable measures to mitigate any adverse environmental effect from accidents and malfunctions that do occur. As part of these measures, the Proponent shall:</p>	<p>We remain concerned regarding the scoping of the marine shipping component of the Project to 12nm and the resulting limitation on the scope of Project conditions relating to that component (e.g. conditions 8.4 and 8.9 regarding marine mammals and condition 19.1 regarding accidents and malfunctions). As you know, Maa-nulth proposed scoping this and similar marine shipping projects to the outer limits of the Exclusive Economic Zone (200nm not 12nm).</p>	<p>The port authority notes that its feedback on the draft conditions (see Section 3.2 and Appendix 3.2-A of Part One of the port authority's submission (CIAR #3546)) considers, among other key principles (outlined in Section 3.1 of Part One), the port authority's ability to implement measures. The port authority's feedback on the Whole of Government Response, in Section 3.3 of Part One, is also relevant to the consideration of measures to be implemented by the Government of Canada with respect to marine shipping incidental to the project outside the port authority's jurisdiction.</p>

Table 2 – Response to comments by Snuneymuxw First Nation

Posted April 6, 2022. Link: [CIAR #3540](#)

#	Section	Original condition	Comment and suggested amendment	Port authority response
SFN-3	2.5.4 & 2.5.5 – Follow-up requirements	<p>2.5.4 – the levels of environmental change relative to baseline that are caused by the Designated Project and that would require the Proponent to implement modified or additional mitigation measure(s), including instances where the Proponent may require Designated Project activities causing the environmental change to be stopped;</p> <p>2.5.5 - the technically and economically feasible mitigation measures to be implemented by the Proponent if monitoring conducted as part of the follow-up program shows that the levels of environmental change referred to in condition 2.5.4 have been reached or exceeded; and</p>	<p>Currently, there are no Snuneymuxw First Nation defined thresholds that can identify when change to Snuneymuxw's Section 35 rights and interests exceed manageable levels.</p> <p>This must be discussed further with the EAO and the IAAC to ensure that this project, and future projects, can understand levels of change to Snuneymuxw's Section 35 rights and interests which may result in harmful exceedances.</p>	<p>The port authority understands the intent of draft conditions 2.5.4 and 2.5.5 to pertain to monitoring of environmental parameters contemplated in the context of follow-up programs for specific intermediate and valued components, as outlined in other draft conditions.</p> <p>The port authority also notes that the levels of environmental change would be determined in consultation with the party or parties being consulted with respect to the development of follow-up programs, as specified in other draft conditions.</p>
SFN-4	2.9 - Follow-up requirements	<p>Where consultation with Indigenous groups, Indigenous groups (marine shipping), and/or Indigenous groups (Fraser River) is a requirement of a follow-up program, the Proponent shall discuss the follow-up program with each group and shall determine, in consultation with each group, opportunities for their participation in the implementation of the follow-up program, including the conduct of monitoring, the analysis and reporting of follow-up results and whether modified or additional mitigation measure(s) are required, as set out in condition 2.8.</p>	<p>The provision of fair and equitable funding for ongoing participation in follow-up programs must be explicitly described.</p> <p>Snuneymuxw First Nation suggests an additional condition under 2.9:</p> <p>Where consultation with Indigenous groups, Indigenous groups (marine shipping), and/or Indigenous groups (Fraser River) is a requirement of a follow-up program, the Proponent shall discuss the follow-up program with each group and shall determine, in consultation with each group, capacity needs and opportunities for their participation in the implementation of the follow-up program, including the conduct of monitoring, the analysis and reporting of follow-up results and whether modified or additional mitigation measure(s) are required, as set out in condition 2.8.</p>	<p>The port authority notes that capacity needs would be addressed in the context of discussing opportunities for Indigenous group participation in follow-up programs. The port authority has no concern with this suggested revision.</p>
SFN-5	2.10 – Annual reporting	<p>2.10 – The Proponent shall prepare an annual report that sets out, for each reporting year:</p> <p>2.10.1 – the activities undertaken by the Proponent to comply with each of the conditions set out in this document;</p> <p>2.10.2 – how the Proponent complied with condition 2.1;</p> <p>2.10.3 - for conditions set out in this document for which consultation is a requirement, a summary of any views and information received during or as a result of consultation and how the Proponent considered and addressed the views and information received;</p> <p>2.10.4 - the information referred to in conditions 2.5 for each follow-up program and any update to that information made pursuant to condition 2.6;</p> <p>2.10.5 – a summary of the results of the follow-up program requirements;</p> <p>2.10.6 – any modified or additional mitigation measure implemented or proposed to be implemented by the Proponent, as determined pursuant to condition 2.8;</p> <p>2.10.7 – for any conditions where implementation is specifically stated to be dependent in whole or in part upon economic or</p>	<p>Snuneymuxw First Nation should be provided the opportunity to review the annual reporting documents a minimum of 30 days prior to their submission to the Agency to validate the information summaries and comment on how views and information received was addressed by the Proponent. This provision should be added under section 2.10 or 2.12 to ensure compliance.</p>	<p>The port authority has no concern with respect to providing, to each Indigenous group for review prior to submission of each annual report, the summary of any views and information received during or as a result of consultation with any specific Indigenous group, and the summary of how the proponent considered and addressed those views and information.</p>

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		<p>technical feasibility, and the Proponent determines it is not economically or technically feasible, the Proponent shall provide a reasonable justification for that determination;</p> <p>2.10.8 – the activities undertaken by the Proponent related to its participation in regional initiatives; and</p> <p>2.10.9 - for any plan that is a requirement of a condition set out in this document, any update(s) to the plan that have been made during the reporting year.</p>		
SFN-6	2.16 & 2.17 – Change to the designated project	<p>2.16 – If the Proponent is proposing to carry out the Designated Project in a manner other than described in condition 1.7, the Proponent shall notify the Agency in writing in advance. As part of the notification, the Proponent shall provide:</p> <p>2.16.1 – a description of the proposed change(s) to the Designated Project and the environmental effects that may result from the change(s);</p> <p>2.16.2 – any modified or additional measure to mitigate any environmental effect that may result from the change(s) and any modified or additional follow-up requirement; and</p> <p>2.16.3 - an explanation of how, taking into account any modified or additional mitigation measure referred to in condition 2.16.2, the environmental effects that may result from the change(s) may differ from the environmental effects of the Designated Project identified during the environmental assessment.</p> <p>2.17 - The Proponent shall submit to the Agency any additional information required by the Agency about the proposed change(s) referred to in condition 2.16, which may include the results of consultation with Indigenous groups and relevant authorities on the proposed change(s) and environmental effects referred to in condition 2.16.1 and the modified or additional mitigation measures and follow-up requirements referred to in condition 2.16.2.</p>	<p>Consultation with Indigenous groups should be a requirement under condition 2.16 and 2.17 as changes to Project components and activities can result in different/additional adverse impacts to Section 35 rights and interests. As currently written, condition 2.17 implies that consultation with Indigenous groups is optional if the Proponent is proposing changes to the Project. The language should be amended. The word ‘may’ in line two should be updated to ‘must’ which would make consultation and reporting on that consultation a requirement.</p> <p>Snuneymuxw First Nation also suggest the following addition to condition 2.16, which will require the Proponent, in consultation with Indigenous groups, to provide:</p> <p>2.16.3 - a description of how the proposed change(s) to the Designated Project will impact Indigenous groups’ potential or established Aboriginal rights and interests, any modified or additional mitigation measures to address these impacts, and any additional follow-up requirements.</p>	<p>As stated in the port authority’s feedback on the draft conditions (Appendix 3.2-A of Part One of the port authority’s submission (CIAR #3546)), the port authority notes that the scope of consultation on potential project changes would depend on what the change is and what its effects may be. For example, a project change that is limited to the terminal footprint and would have no effects outside of the Designated Project Area and/or requires mitigation measures to be implemented only within the terminal may warrant consultation with Indigenous groups (Roberts Bank), whereas a project change that may have effects in a broader area or require mitigation measures to be implemented in a broader area may warrant consultation with Indigenous groups (marine shipping) and/or Indigenous groups (Fraser River) as well.</p> <p>Regarding the proposed revision to condition 2.16.3, the port authority notes that, pursuant to the <i>Canadian Environmental Assessment Act, 2012</i>, “environmental effect” includes, “with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on</p> <ul style="list-style-type: none"> (i) health and socio-economic conditions, (ii) physical and cultural heritage, (iii) the current use of lands and resources for traditional purposes, or (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.”
SFN-7	3.4.2 – Air quality and greenhouse gas emissions	<p>provide incentives to third-party contractors to use zero-emission mobile and stationary off-road equipment required for any physical activity undertaken in relation to the construction and operation of the marine terminal, the widened causeway, and the expanded tug basin or, if zero-emission equipment is not available or its use is not technically or economically feasible, provide a rationale for that determination and require third-party contractors to use equipment that:</p> <p>3.4.2.1 – uses diesel engines operating on diesel or low-carbon diesel fuel that meet Tier 4 emissions standards where technically and economically feasible or, at a minimum, Tier 3 emission standards and is equipped with verified diesel particulate filters and for which both the engines and the filters are maintained in accordance with maintenance instructions provided by the manufacturer; or</p>	<p>If zero-emission equipment is not available or its use is not technically or economically feasible, a condition must be added for additional follow-up/monitoring related to odour emissions which can impact Snuneymuxw First Nation’s Section 35 rights and interests through increased avoidance of the area in proximity to the project.</p> <p>This will provide additional incentive to the proponent and third-party contractors to use zero-emission mobile and stationary equipment.</p>	<p>The port authority notes that draft condition 3.6 already includes a requirement to develop and implement a follow-up program for air emissions. The parameters to be monitored would be determined during the development of that follow-up program, in consultation with specified relevant authorities and Indigenous groups, in accordance with draft condition 3.6.1.</p>

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		3.4.2.2 - uses low-carbon fuel, which may include natural gas, propane or hydrogen, while meeting Tier 4 emissions standards where technically and economically feasible or, at a minimum, Tier 3 emission standards and being maintained in accordance with maintenance instructions provided by the manufacturer;		
SFN-8	4.3 – Atmospheric noise and vibration	<p>The Proponent shall develop, prior to each phase of the Designated Project and in consultation with the City of Delta, Health Canada, and Indigenous groups, a follow-up program as described in Table C22 of Appendix G in the Federal Review Panel Report to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse environmental effects on human health caused by noise and vibration attributable to the construction and operation of the marine terminal, the widened causeway, and the expanded tug basin. The Proponent shall implement the follow-up program in accordance with conditions 2.5 to 2.9. As part of the follow-up program, the Proponent shall:</p> <p>4.3.1 – determine, prior to construction, the data requirements for noise monitoring for all phases of the Designated Project;</p> <p>4.3.2 – consider Health Canada’s noise guidance and associated thresholds that are available at the time of construction when determining human health threshold(s) that would require the Proponent to implement modified or additional mitigation measure(s) pursuant to condition 4.3.6;</p> <p>4.3.3 – consider the most sensitive human receptors, including potential receptors in the marine environment, when determining the location of noise monitoring;</p> <p>4.3.4 – monitor sound levels, including low-frequency noise, continuously during construction and the first two years of operation at a minimum of two locations on Tsawwassen First Nation lands;</p> <p>4.3.5 – monitor sound levels, including low-frequency noise offshore from the Designated Project at a frequency and location determined in consultation with Indigenous groups; and</p> <p>4.3.6 - develop and implement modified or additional mitigation measures to mitigate the noise contribution of the construction and operation of the marine terminal, the widened causeway, and the expanded tug basin, at source or at any receptor location where sound levels are monitored, if the results of any monitoring conducted as part of the follow-up program demonstrate that noise levels attributable to the Designated Project at any receptor location are higher than noise levels predicted during the environmental assessment and/or are above the relevant human health threshold(s) defined in the follow-up program.</p>	<p>Table C22 of Appendix G in the Federal Review Panel Report (Reference No. 80054) under ‘Responsibility’ indicates that Consultation must occur with ‘... Tsawwassen First Nation, Musqueam First Nation, and other interested Indigenous groups’. Please clarify what notification process will be required for the Proponent to advise interested Indigenous groups of the opportunity to participate in the development of follow-up programs to adverse environmental effects on human health caused by Project-related noise and vibration.</p>	<p>The port authority notes the draft condition does not use the term “interested” Indigenous groups and that the reference to “Indigenous groups” within the draft condition refers to those defined in draft condition 1.22 (refer to Appendix 3.2-A of Part One of the port authority’s submission (CIAR #3546)). The port authority further notes that a process for determining the interest of Indigenous groups identified in conditions for consultation is addressed by draft condition 2.4, while general requirements regarding consultation with Indigenous groups on the follow-up program are addressed in draft condition 2.9.</p>
SFN-9	5.1 - Light	<p>The Proponent shall develop, prior to the relevant phase of the Designated Project and in consultation with Indigenous groups, Environment and Climate Change Canada, Fisheries and Oceans Canada, Transport Canada, and the City of Delta, measures to mitigate adverse environmental effects caused by light emitted during</p>	<p>Changes in light can create real and perceived changes for Indigenous groups and increase avoidance behaviours. The development of mitigation measures should not be limited to environmental effects and should also include adverse effects to Section 35 rights and interests. The condition can be amended to</p>	<p>The port authority notes that, pursuant to the <i>Canadian Environmental Assessment Act, 2012</i>, “environmental effect” includes, “with respect to aboriginal peoples, an effect occurring in Canada of any change that may be caused to the environment on</p>

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		construction and operation of the marine terminal, the widened causeway, and the expanded tug basin, while meeting safety, operational, or regulatory requirements. As part of these measures, the Proponent shall:	say: "... measures to mitigate adverse environmental effects, and effects to Section 35 rights and interests caused by light emitted during construction and operation of the marine terminal..."	<ul style="list-style-type: none"> (i) health and socio-economic conditions, (ii) physical and cultural heritage, (iii) the current use of lands and resources for traditional purposes, or (iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance. <p>With respect to potential impacts on treaty rights, the port authority notes the following perspective of the review panel (section 18, p. 319, CIAR #2062):</p> <p>"Throughout the [review panel] report, the Panel has made recommendations on the biophysical environmental components, as well as, with respect to Indigenous peoples, on current use of lands and resources for traditional purposes, physical and cultural heritage and any place, structure or thing of historical and archaeological importance, and health and socio-economic conditions. These recommendations are made to mitigate or avoid potential environmental effects of the Project, which, in turn, could avoid or mitigate Project impacts on Aboriginal or Treaty rights."</p> <p>As noted in Section 2.1.4 of Part One of the port authority's submission (CIAR #3546), the potential effects and cumulative effects of the project are mitigable both by the measures required by the conditions that would be imposed on the proponent and by the actions that are being taken, will be taken, and can be taken by the Government of Canada, as outlined in the draft Whole of Government Response to the recommendations of the review panel.</p>
SFN-10	5.2 - Light	The Proponent shall develop, prior to construction and in consultation with Environment and Climate Change Canada, Fisheries and Oceans Canada, the City of Delta, Transport Canada, Tsawwassen First Nation, and other Indigenous groups, a follow-up program as described in Table C20 of Appendix G in the Federal Review Panel Report to verify the accuracy of the environmental assessment and determine the effectiveness of mitigation measures as it pertains to adverse changes to ambient lighting attributable to the construction and operation of the marine terminal, the widened causeway, and/or the expanded tug basin, including in the marine environment. The Proponent shall implement the follow-up program in accordance with conditions 2.5 to 2.9. As part of the follow-up program, the Proponent shall:	<p>See Comments 8 and 9.</p> <p>Please elaborate on the notification process to advise Indigenous groups of opportunities to participate in follow-up programs.</p> <p>Additionally, changes in ambient lighting are not restricted to adverse environmental effects and can also create real and perceived changes for Indigenous groups with respect to their Section 35 rights and interests and increase avoidance behaviours.</p>	See responses to comments SFN-8 and SFN-9.
SFN-11	7.3 – Fish and fish habitat	<p>The Proponent shall have a qualified professional develop, prior to construction and in consultation with Indigenous groups, Indigenous groups (marine shipping), Indigenous groups (Fraser River) and Fisheries and Oceans Canada, measures to avoid and mitigate adverse environmental effects of the Designated Project on marine species during in-water work activities during construction. The Proponent shall implement the mitigation measures during construction. As part of the measures, the Proponent shall:</p> <p>7.3.1 -* conduct in-water work activities in the local assessment area indicated on figure 13-1 of the environmental impact</p>	<p>Project-related in-water work activities during construction can also result in adverse impacts to Snuneymuxw Section 35 rights and interests by increasing harvester avoidance and impacting safety. As currently written, this condition focuses solely on mitigating and avoiding adverse environmental effects on marine species.</p> <p>Snuneymuxw First Nation would like to propose additional language, including the addition of a timing window condition specific to Indigenous groups under Condition 7.3.1:</p>	<p>The port authority acknowledges Snuneymuxw's comments on the draft condition regarding potential impacts on treaty rights. The port authority notes, in this regard, the following perspective of the review panel (section 18, p. 319, CIAR #2062):</p> <p>"Throughout the [review panel] report, the Panel has made recommendations on the biophysical environmental components, as well as, with respect to Indigenous peoples, on current use of lands and resources for traditional purposes, physical and cultural heritage and any place, structure or thing of historical and archaeological importance, and health and socio-economic</p>

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		<p>statement during timing windows of least risk for marine species, including those identified in condition 8.1.7 and during the following timing windows:</p> <p>7.3.1.1 - for in-water work activities below -5 metre chart datum, during the timing window of least risk for Dungeness crab (<i>Cancer magister</i>) (March 31 - October 15), unless otherwise authorized under the <i>Fisheries Act</i>;</p> <p>7.3.1.2 - for in-water work activities above -5 metre chart datum, during the timing window of least risk for juvenile salmon (August 16 - February 28), unless otherwise authorized under the <i>Fisheries Act</i>; and</p> <p>7.3.1.3 – any additional timing windows of least risk identified through any authorization under the <i>Fisheries Act</i> for the Designated Project;</p> <p>7.3.2 – validate every two years that the timing windows of least risk referred to in condition 7.3.1 are appropriate considering the environmental conditions at the time;</p> <p>7.3.3 – monitor for spawning herring presence during in-water work activities conducted outside the timing window of least risk for juvenile salmon and in mid to late February, in areas that spatially overlap with herring spawning habitats, and use this information to inform the development and implementation of additional mitigation measures; and</p> <p>7.3.4 - determine the means, timing, frequency and location(s) of monitoring in condition 7.3.3.</p>	<p>7.3.1.4 – any additional rights-based timing windows of least risk to Indigenous harvesters or land users identified through consultation with Indigenous groups.</p>	<p>conditions. These recommendations are made to mitigate or avoid potential environmental effects of the Project, which, in turn, could avoid or mitigate Project impacts on Aboriginal or Treaty rights.”</p> <p>As noted in Section 2.1.4 of Part One of the port authority's submission (CIAR #3546), the potential effects and cumulative effects of the project are mitigable both by the measures required by the conditions that would be imposed on the proponent and by the actions that are being taken, will be taken, and can be taken by the Government of Canada, as outlined in the draft Whole of Government Response to the recommendations of the review panel.</p> <p>The port authority understands the intent of the timing windows specified in draft condition 7.3 to pertain to mitigation of potential adverse environmental effects on marine species that may be present in the project area.</p> <p>The port authority notes that interactions with marine users, including those harvesting marine species identified in the condition, would be managed through the implementation of other draft conditions, including draft conditions 11.1 and 12.1.</p>
SFN-12	7.7 - Fish and fish habitat	<p>The Proponent shall develop, prior to construction and in consultation with Fisheries and Oceans Canada, Tsawwassen First Nation, Musqueam, and other Indigenous groups, a follow-up program as described in Table C7 of Appendix G in the Federal Review Panel Report to verify the accuracy of the environmental assessment as it pertains to the continued establishment and use of juvenile Dungeness crab (<i>Cancer magister</i>) nursery habitat. The Proponent shall implement the follow-up program in accordance with conditions 2.5 to 2.9.</p>	<p>See Comment 8</p> <p>Please elaborate on the notification process that will be implemented to inform interested Indigenous groups of consultation opportunities to participate in the establishment of juvenile Dungeness crab nursery habitat.</p>	<p>See response to comment SFN-8.</p>
SFN-13	7.14 - Fish and fish habitat	<p>The Proponent shall develop, prior to construction and in consultation with Fisheries and Oceans Canada, Indigenous groups, Indigenous groups (marine shipping), and Indigenous groups (Fraser River), a follow-up program as described in Table C9 of Appendix G in the Federal Review Panel Report to verify the accuracy of the environmental assessment as it pertains to changes to productivity of juvenile salmon as a result of the Designated Project. The Proponent shall implement the follow-up program in accordance with conditions 2.5 to 2.9. As part of the follow-up program, the Proponent shall:</p> <p>7.14.1 – monitor, prior to, during and after construction, the abundance and distribution of Pacific salmon (<i>Oncorhynchus</i>) in the local assessment area indicated on figure 13-1 of the environmental impact statement using a statistically defensible sampling program; and</p>	<p>See Comment 8</p> <p>Please elaborate on the notification process that will be implemented to inform interested Indigenous groups of verification opportunities for the assessment of changes in productivity to juvenile salmon.</p>	<p>See response to comment SFN-8.</p>

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		7.14.2 - monitor any effects of the marine terminal and breach for fish passage on the migration patterns of juvenile salmon.		
SFN-14	15.1 – Indigenous Monitors	The Proponent shall retain, prior to construction, the services of Indigenous monitors to observe, record, and report on the implementation of the conditions set out in this document during construction. Prior to retaining the services of Indigenous monitors, the Proponent shall undertake a collaborative process to determine, in consultation with Indigenous groups, the scope, purpose and objectives of the participation of Indigenous monitors and shall provide that information to the Agency prior to construction. As part of that process, the Proponent shall determine:	How will the Proponent or the Agency determine the number of Indigenous monitors, and which nations they will represent, that will be appropriate to satisfy the requirements of this condition? Indigenous monitors chosen from other nations cannot represent Snuneymuxw First Nation’s Section 35 rights and interests, or vice versa. As such, it is important that Indigenous monitors are chosen in such a way to ensure each nation’s concerns and perspectives are accurately captured in monitoring.	The port authority expects that the number of monitors from each Indigenous group (as defined in draft condition 15.1) to observe, record, and report on the implementation of conditions during construction will be determined in consultation with each Indigenous group.
SFN-15	15.1 - Indigenous Monitors	<p>The Proponent shall retain, prior to construction, the services of Indigenous monitors to observe, record, and report on the implementation of the conditions set out in this document during construction. Prior to retaining the services of Indigenous monitors, the Proponent shall undertake a collaborative process to determine, in consultation with Indigenous groups, the scope, purpose and objectives of the participation of Indigenous monitors and shall provide that information to the Agency prior to construction. As part of that process, the Proponent shall determine:</p> <p>15.1.1 – how each Indigenous monitor shall be involved in monitoring their areas of interest, including the location, frequency, timing and duration of their participation;</p> <p>15.1.2 – how the Proponent shall support the participation of Indigenous monitors, including through the provision of training (including safety or skills certifications), equipment (including personal protective equipment), and access to the Designated Project area;</p> <p>15.1.3 – how Indigenous monitors shall collect information and shall communicate that information to the Proponent, the independent environmental monitor referred to in condition 16.1, the Indigenous Advisory Committee referred to in condition 17.1, and the Agency;</p> <p>15.1.4 - how monitoring conducted by Indigenous monitors shall be informed by and shall inform the monitoring activities conducted by the independent environmental monitor referred to in condition 16.1 and any other monitor associated with the Designated Project;</p> <p>15.1.5 – how each Indigenous monitor shall be involved in Proponent initiated stop work and corrective action processes should non-compliance with the conditions set out in this document be identified; and</p> <p>15.1.6 - how the Proponent shall consider the information obtained from Indigenous monitors and how the Proponent shall report to Indigenous groups, relevant authorities and the Agency about how information obtained from Indigenous monitors has been considered by the Proponent, including a rationale for why any action recommended by Indigenous monitors has, or has not been taken.</p>	<p>See Comments 9 and 10.</p> <p>The scope of monitoring should not be limited to environmental monitoring and should include the monitoring of effects to Section 35 rights and interests. This should be specified throughout the conditions, as each section currently specifies monitoring in relation to mitigation measures for Project-related effects to the environment, and not Section 35 rights and interests.</p>	See response to comment SFN-9.

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SFN-16	19.6 - Accidents and malfunctions	<p>In the event of an accident or malfunction associated with the Designated Project with the potential to cause adverse environmental effects, the Proponent shall, in conjunction with other relevant authorities, immediately implement the measures appropriate to the accident or malfunction referred to in condition 19.3.6, under the control of the Proponent, and shall:</p> <p>19.6.1 – implement the communication plan referred to in condition 19.7;</p> <p>19.6.2 - notify, as soon as possible through the means established pursuant to 19.7, Indigenous groups and Indigenous groups (marine shipping) and, through established notification procedures, relevant authorities, of the accident or malfunction, and notify the Agency in writing no later than 24 hours following the accident or malfunction, except where notification is required to be undertaken by another relevant authority. For the notification to Indigenous groups, Indigenous groups (marine shipping) and the Agency, the Proponent shall specify:</p> <p>19.6.2.1 - the date when and location where the accident or malfunction occurred;</p> <p>19.6.2.2 - a summary description of the accident or malfunction; and</p> <p>19.6.2.3 – a list of any substance potentially released into the environment as a result of the accident or malfunction.</p> <p>19.6.3 - submit a written report to the Agency no later than 30 days after the day on which the accident or malfunction occurred. As part of the report, the Proponent shall not include information that, if disclosed, could cause specific harm to the environment or people. The written report shall include:</p> <p>19.6.3.1 - a detailed description of the accident or malfunction and of its adverse environmental effects;</p> <p>19.6.3.2 - a description of the measures that were taken by the Proponent and other relevant authorities to mitigate the adverse environmental effects caused by the accident or malfunction;</p> <p>19.6.3.3 - a description of any residual adverse environmental effect and any modified or additional measures under the control of the Proponent to mitigate residual adverse environmental effects;</p> <p>19.6.3.4 - any view from Indigenous groups and advice from relevant authorities received with respect to the accident or malfunction, its adverse environmental effects and the measures under the control of the Proponent to mitigate these adverse environmental effects; and</p> <p>19.6.3.5 – details concerning the implementation of the Accident and Malfunction Response Plan referred to in condition 19.3.</p>	<p>As part of the process for report submission to the Agency. Snuneymuxw First Nation should be provided the opportunity to comment on, and validate the accuracy, of the Proponent's description of Snuneymuxw First Nation's views and advice on the potential incident no more than 30 days prior to final submission to the Agency.</p>	<p>See response to comment SFN-5.</p>

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		<p>19.6.4 - submit a written report to the Agency no later than 90 days after the day on which the accident or malfunction occurred that includes a description of the changes made to avoid a subsequent occurrence of the accident or malfunction and of the modified or additional measure(s) under the control of the Proponent to mitigate and monitor residual adverse environmental effects and to carry out any required progressive reclamation, taking into account the information submitted in the written report pursuant to condition 19.6.3. The report shall include all additional views from Indigenous groups and advice from relevant authorities received by the Proponent since the views and advice referred to in condition 19.6.3.4 were received by the Proponent. As part of the report, the Proponent shall not include information that, if disclosed, could cause specific harm to the environment or people.</p>		
SFN-17	19.7– Accidents and malfunctions	<p>19.7 – The Proponent shall develop, in consultation with Indigenous groups and Indigenous groups (marine shipping), a communication plan for accidents and malfunctions identified pursuant to condition 19.3.3. The communication plan shall not duplicate or conflict with communication aspects of any integrated response plan relevant to the Designated Project. The Proponent shall develop the communication plan prior to construction and shall implement and keep it up to date during all phases of the Designated Project. The plan shall include:</p> <p>19.7.1 - the types of accidents and malfunctions requiring the Proponent to notify the each of the Indigenous groups and Indigenous groups (marine shipping);</p> <p>19.7.2 - the manner by which Indigenous groups Indigenous groups (marine shipping) wish to be notified by the Proponent of an accident or malfunction during each phase of emergency management, including clean-up, and of any opportunity for the Indigenous groups the Indigenous groups (marine shipping) to assist in the response to the accident or malfunction; and</p> <p>19.7.3 - the contact information of the representatives of the Proponent that the Indigenous groups and the Indigenous groups (marine shipping) may contact and of the representatives of each of the Indigenous groups and Indigenous groups (marine shipping) to which the Proponent provides notification.</p>	<p>Any accident and malfunction communication planning from the Proponent should include aspects of emergency response with notification protocols specific to Indigenous harvesters and/or land/marine users. Indigenous harvesters, marine users, and land users cannot always be contacted in ways similar to the general public. Notification protocols and emergency response must be discussed and tailored to each nation’s needs and circumstances while on the land or water harvesting and accessing resources.</p>	<p>The port authority expects that the determination of the manner by which Indigenous groups would be notified, as contemplated in draft condition 19.7.2, would consider the manner of notification for Indigenous group members, such as harvesters, marine users, and land users, who may be affected by an accident or malfunction. The port authority notes that the manner of notification would be determined in consultation with each Indigenous group.</p>