

## GCT Deltaport Expansion - Berth Four Project (DP4) Impact Assessment

### Proposal to First Nations of Maa-nulth Treaty Society: Guidance to Proponent on assessing potential effects of marine shipping within Maa-nulth Domestic Fishing Area – North

#### **Background:**

The Impact Assessment Agency of Canada (IAAC) and the BC Environmental Assessment Office (EAO) are in the planning phase for the impact assessment of the proposed [GCT Deltaport Expansion- Berth Four \(DP4\) Project](#). The proposed project would add a fourth berth to the existing GCT Deltaport container ship terminal at Roberts Bank in Tsawwassen, BC and would result in an additional 52 vessel calls (or 104 ship movements) at GCT Deltaport annually.

On March 29, 2022, IAAC and EAO shared their preliminary views during a workshop with Indigenous nations that marine shipping activities are incidental to the designated physical activity and are therefore part of the project that is subject to assessment under the Impact Assessment Act. The proposed geographic extent of these activities includes the marine shipping routes from the proposed project at Roberts Bank to the outer limit of the Maa-nulth Domestic Fishing Area (DFA) South as defined under the *Maa-nulth First Nations Final Agreement* as well as the outer limit of Southern Resident Killer Whale critical habitat area.

The Crown notes that the proposed assessment approach for this Project is different from past assessments for major projects Maa-nulth has participated in, not only in terms of the geographic scope of marine shipping, but also in terms of what is assessed and the assessment approach.

Recent environmental assessments for projects with a marine shipping component such as Roberts Bank Terminal 2, Tilbury Marine Jetty, and the Trans Mountain Expansion Project limited the geographic extent of marine shipping activities to the 12 nautical mile limit of Canada's territorial sea.

Further, the term 'Indigenous interests', to be used in the DP4 Joint Impact Statement Guidelines, refers to any and all the requirements relating to Indigenous nations specified by either or both the *Impact Assessment Act, 2019* (IAA) and the *B.C. Environmental Assessment Act, 2018* (BC Act). Such provisions are distinct from provisions of the earlier acts under which the above major projects are/were assessed:

- Section 22(1)(c) of the IAA requires the assessment of the impacts that the proposed project may have "on any Indigenous group and any adverse impact that the designated project may have on the rights of the Indigenous peoples of Canada recognized and affirmed by section 35 of the *Constitution Act, 1982*". The review panel will provide advice to the Minister on such potential impacts in their impact assessment report.
- Section 2(1) of the IAA requires an assessment of the effects of the project, within federal jurisdiction, with respect to the Indigenous peoples of Canada, including an impact — occurring in Canada and resulting from any change to the environment — on (i) physical and cultural heritage, (ii) the current use of lands and resources for traditional purposes, or (iii) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance; and any change occurring in Canada to the health, social or economic conditions of the Indigenous peoples of Canada. In their impact assessment report, the review panel will have

to provide advice to the Minister in the impact assessment report on the extent to which likely, adverse effects within federal jurisdiction and direct or incidental effects on Indigenous nations are significant.

- Section 2(2)(b) of the B.C. Act defines Indigenous interests as "those interests related to an Indigenous nation and their rights recognized and affirmed by section 35 of the *Constitution Act, 1982*, including Treaty rights and Aboriginal rights and title, that may be impacted by a proposed project". Section 25(1) of the B.C. Act requires the assessment of effects of a project on Indigenous nations and rights recognized and affirmed by section 35 of the *Constitution Act, 1982*. The B.C. environmental assessment decision must take this into account along with consent or non-consent from participating Indigenous nations and information, if any, respecting an arrangement reached with a participating Indigenous nation in relation to the potential effects of the project on the nation.

During the March 29 workshop, Maa-nulth First Nations indicated that, in accordance with their modern treaties with the Crown, both the North and South DFAs must be considered within the scope of the assessment. Maa-nulth, IAAC and BCEAO convened for a follow up discussion on April 11 to better understand Maa-nulth's views on this issue. During the meeting, Maa-nulth explained the existing effects of marine shipping on the rights of Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations, who practice their rights in the northern DFA and are one of the five modern treaty holders represented by the First Nations of Maa-nulth Treaty Society. They expressed that including the northern DFA within the scope of the assessment would align with the spirit of their treaty along with one of their guiding principles, hišuk ma c'awak, which broadly means 'everything is connected'. See Annex 2 for draft notes from this meeting.

***Crown perspective on challenges with respect to including shipping activities within Maa-nulth's Domestic Fishing Area – North as incidental to the Designated Project:***

The Crown acknowledges that there are existing effects of marine shipping that impact Maa-nulth's rights in both the north and south DFAs, and is committed to working with the five Maa-nulth Nations as treaty partners to find a way to address these concerns about effects on Ka:'yu:k't'h'/ Che:k'tles7et'h' First Nations in the north. However, there are challenges in doing so by increasing the geographic extent of marine shipping activities incidental to the project.

There is a strong rationale to include Maa-nulth's the DFA South in the scope, as every container ship that travels through the Strait of Juan de Fuca would travel through the DFA South. By contrast, the number of vessels transiting the DFA North is smaller. As well, as you examine marine shipping activities further away from the terminal, it is increasingly challenging to link such activities to the Project. This consideration is one of the criteria used in our analysis of whether an activity is incidental to the Project. For this reason, we suggest that the geographic extent remain as currently proposed.

***Proposed approach: Guiding Proponent to assess effects within Maa-nulth Domestic Fishing Area – North through Maa-nulth's specific section of the Joint Guidelines:***

As an alternative means of ensuring potential effects within the northern DFA are considered, the Crown is proposing to work with Maa-nulth to include these concerns in the Maa-nulth specific Section of the [Joint Guidelines](#) (section 13.4), framed by their guiding principle of hišuk ma c'awak. The Proponent is required to reach out to Indigenous nations and engage with them on their concerns as outlined in the

Joint Guidelines. Thus, in effect, this would direct the Proponent to consider effects on the DFA North, whereby Maa-nulth can outline the specific information they require in order to assess such effects. The Proponent would work with Maa-nulth to collect this information, and the Crown will engage with Maa-nulth on how to address these impacts, including through potential accommodation. This option can ensure a future panel has information about effects in the North to inform their conclusions and recommendations. The proponent will work with Maa-nulth to identify the activity related to the additional vessel traffic in the north, and determine the appropriate level of information required commensurate with the vessel traffic and potential for impacts.

As part of Maa-nulth's section of the Joint Guidelines, the proponent would be required to work with Maa-nulth, and to assess impacts on Indigenous interests and associated VCs in a manner consistent with the guiding principle of hišuk ma c'awak. Maa-nulth's knowledge, views, and conclusions on the effects of marine shipping associated with the project, regardless of where those effects take place, can be integrated into the Impact Statement.

While the Crown can only condition activities that are part of the Designated Project, we do have confidence that any conditions put into place to address effects in the DFA South would support mitigating impacts in DFA North. However, in general the Crown has limited tools to develop conditions related to marine shipping, given the limited care and control of the proponent. The primary tools to address shipping impacts are located within the federal government. If concerns around DFA North are incorporated into Maa-nulth's section of the guidelines, the benefit is that the federal family can participate in the assessment of this area along with discussions around tools for addressing potential impacts, including accommodation.

### ***Conclusion***

We appreciate the consideration of this proposal by the First Nations of Maa-nulth Treaty Society. The Crown is committed to continue this collaborative dialogue as part of upholding the spirit of the five modern treaties between Canada, BC, and the five Maa-nulth Nations, and honouring our government-to-government relationship. In particular, our hope is through this approach we can ensure the voice of Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations are heard and considered as part of this assessment.

## 13.4 First Nations of the Maa-nulth Treaty Society

The First Nations of the Maa-nulth Treaty Society self-identified as participating Indigenous nations to the EAO on November 27, 2020.

Maa-nulth are five independent self-governing modern treaty nations, participating collectively in this engagement through the Maa-nulth Treaty Society. The nations represented in this Society are: Huu-ay-aht First Nations, Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations, Toquaht Nation, Uchucklesaht Tribe, and Yuułuꞑiꞑath Government.

The Impact Statement must include an aggregate assessment of project effects on the Indigenous interests of member Indigenous nations of the First Nations of the Maa-nulth Treaty Society.

The proponent and First Nations of the Maa-nulth Treaty Society are currently engaged in confidential discussions regarding VCs and Indigenous interests. This version of the First Nations of the Maa-nulth Treaty Society assessment does not contain confidential information provided by the First Nations of the Maa-nulth Treaty Society.

The Maa-nulth Treaty Society specified the following guiding principles for the assessment process:

Commitments from the proponent:

- be guided by the principles of meaningful, transparent, timely, and responsive engagement;
- support the principles of the United Nations Declaration on the Rights of Indigenous Peoples; and
- strive to develop and maintain strong, mutually respectful relationships with Indigenous nations.

Maa-nulth's approach for this engagement:

- guided by their sacred principles: ꞑiisaak (utmost respect), ꞑuuꞑaꞑuk (taking care of) and hiꞑuk ma ꞑawak (everything is one), spelled and pronounced slightly different in Northern and Southern Nuu-chah-nulth dialects;
- with a belief that the Maa-nulth Treaty is only the beginning of reconciliation for Maa-nulth people;
- with a belief that project engagements too play a key role in advancing reconciliation and implementing the *-United Nations Declaration on the Rights of Indigenous Peoples*;
- with intention to build a strong, mutually respectful relationship with the proponent;
- with a belief that two-eyed seeing and transparency are foundational to that relationship; and
- with an interest in the network of marine economic highways through their territories.

**Table 13.4 Maa-nulth Treaty Society-Specific Potential Effects on Indigenous Interests**

Preliminary Indigenous Interests	Preliminary Potential Effects
Harvesting and Subsistence Activities	<p>Impacts on crab and other marine species.</p> <p>Impacts of marine shipping noise, not just on SRKW but also juvenile fish and fauna ocean species.</p> <p>Impacts from invasive species being brought into the area from travelling ships.</p> <p><u>Effects on all species we have treaty rights to harvest and the habitat those resources rely on, including species that utilize the Fraser River watershed and without identifying crab as the primary species of interest.</u></p> <p><u>Effects on food security.</u></p> <p><u>Cumulative effects of marine shipping projects.</u></p> <p><u>Effects of increased emissions from cargo handling, vessel traffic and vehicle traffic on climate change and the resulting effects of climate change on Maa-nulth (e.g. warming seas contributing to the introduction of invasive species).</u></p>
Cultural Use Sites and Areas	<p>Impacts to the environment and resources within Maa-nulth territories will impact Maa-nulth culture as a whole.</p> <p><u>Effects on species important to our culture and the habitat those resources rely on, including salmon and Southern Resident Killer Whales.</u></p> <p><u>Effects on marine safety.</u></p>
Social and Economic Conditions	<p>Trade and barter as an impacted cultural and economic activity.</p> <p><u>Effects on our commercial rights and interests, including our commercial fishing licences, which we have a right to convert into constitutionally protected treaty rights.</u></p> <p><u>Participation in the changing economy of the west coast, including sharing in the wealth of DP4.</u></p>
Indigenous Health and Well-being	<p>Impacts on Maa-nulth members' well-being from not being able to carry out traditional practices as preferred.</p> <p><u>Effects on the exercise of our rights and interests, including the locations we exercise them, our travel routes, our experience exercising them and resulting effects on intergenerational knowledge transfer and cultural continuity.</u></p>
Indigenous Governance Systems	<p>Concerns about the unjustifiably infringement of Aboriginal and/or Treaty Rights, including resource harvesting and traditional practices.</p>

Effects on our governance rights, including our ability to co-manage resources within our territories.

---

\* Maa-nulth have requested that marine shipping accidents and malfunctions should be listed as a potential pathway for effects, for all categories.

### **Section 13.4.1: Assessment of potential effects of marine shipping associated with the project within Maa-nulth Domestic Fishing Area - North**

As a way of upholding the spirit and intent of the *Maa-nulth First Nations Final Agreement* and the guiding principle of hišuk ma c'awak (everything is one), the proponent must work with Maa-nulth to assess potential effects of marine shipping associated with the project within the Maa-nulth Domestic Fishing Area North.

The proponent must work with Maa-nulth to identify the activity related to the additional vessel traffic in the Domestic Fishing Area North, and determine the appropriate level of information required commensurate with the vessel traffic and potential for impacts. This work should be conducted in a manner that is consistent with the assessment approach and methods outlined in section 8 and section 12 of these guidelines and with the direction on marine shipping described in section 16. Maa-nulth will work with the proponent to assess these effects, including providing conclusions.

This specific assessment should consider effects on valued components (VCs) specific to the North as identified by Maa-nulth, including:

- Fish and Fish Habitat ;
- Marine Mammals ;
- Culture ;
- Air Quality ;
- Birds and their habitat
- Human Health.

This assessment of effects on Maa-nulth Domestic Fishing Area North should be undertaken in collaboration with Maa-nulth to establish appropriate spatial, temporal boundaries and, as appropriate, administrative and technical boundaries to describe the existing conditions for, and to guide the assessment of each VC in the bulleted list above.

## Annex 2: DRAFT April 11 Meeting Notes

### GCT Deltaport Expansion, Berth Four Project – Meeting with Maa-nulth Treaty Society

DRAFT April 11, 2022 – 11:00am to 12:00pm PST

MS Teams Meeting

Participants	
<b>IAAC</b> – Jane Stringham, Jocelyn Harrington Analise Saely <b>BCEAO</b> – Mabel Martinez-Dussan	<b>Maa-nulth Treaty Society</b> – Mark Stephens, Kristy A. Pozniak, Anna Horel, Ron Frank
Action Items	
<ul style="list-style-type: none"><li>• IAAC shared that Canada has limited jurisdiction beyond the 67 nautical mile point in the southern part of Maa-nulth’s domestic fishing territory. IAAC asked Maa-nulth what the Government of Canada would be missing by not going out to the 200 nautical mile limit. Maa-nulth will take this question away. Maa-nulth stated that it will be very important to include the northern part of their traditional fishing area.</li><li>• IAAC will take information about Maa-nulth’s concerns about marine shipping in the northern part of their territory and short sea shipping back and follow-up in a future meeting to keep this discussion moving.</li><li>• IAAC will share the draft meeting notes with Maa-nulth.</li><li>• IAAC would like to meet in a week to finalize the draft Joint Guidelines.</li></ul>	

### Updates

- Maa-nulth shared they are strained from working on two competing projects at the same time (i.e., RBT2 and DP4). IAAC acknowledged the challenge of these similar processes and apologized. IAAC suggested that Maa-nulth should make the DP4 draft Joint Guidelines and planning documents the priority.
- Maa-nulth acknowledged that there is a positive shift in DP4’s draft Joint Guidelines for determining what needs to be assessed under *Impact Assessment Act, 2019*.

### Draft Joint Guidelines – Marine Shipping Comments

- IAAC shared their responses to Maa-nulth’s comments on the draft Joint Guidelines. Maa-nulth’s comments were proposing that marine shipping be assessed within Maa-nulth’s entire domestic fishing area. IAAC and BCEAO are of the view that marine shipping should be assessed within Southern Resident Killer Whale (SRKW) territory and Maa-nulth’s southern portion of their domestic fishing area.
- IAAC shared that Canada has limited jurisdiction beyond the 67 nautical mile point in the southern part of Maa-nulth’s domestic fishing territory. IAAC asked Maa-nulth what effects the Government of Canada would be missing by not going out to the 200 nautical mile limit. Maa-nulth will take this question away. Maa-nulth stated that it will be very important to include the northern part of their traditional fishing area.
- Maa-nulth shared maps with their submission that show that the marine shipping from the project will go through the southern and northern parts of their domestic fishing area. This

triggers the Treaty and the requirement to fully assess what the potential impacts could be. The Treaty has five independent and self-governing Indigenous nations with distinct interests in relation to their territories. It is important through this process to work with each of the five Treaty partners to assess, understand and accommodate the impacts on their unique and distinct interests. This makes it important to consider the northern part of the traditional territory as part of the assessment.

- Maa-nulth has internal sharing committees for determining access and use in the fishing areas. There will be ships from DP4 going to and from the port in the northern part of the traditional fishing area. Maa-nulth would feel set aside in this assessment if the northern part of the traditional territory is excluded. Everything is connected and Maa-nulth needs to have a say in what is going on in their territory.
- IAAC shared that they are expected to set a geographic extent that is reasonable for the proponent to assess effects within. IAAC acknowledged that of the extra 52 vessel calls that the proponent is expecting, a portion of those calls will go through the Maa-nulth traditional fishing area.
- IAAC asked if Maa-nulth could share more information about their activities in the northern area. Maa-nulth shared that in the northern part of the territory there is a lot of nearshore activity. When Maa-nulth does go offshore to fish, it is not a good feeling to have fog around and no idea where the ships are. Maa-nulth has safety concerns from the ships. Maa-nulth's territory suffered from an oil ship spill, and Maa-nulth has had container spills on their beaches for decades and cleaning it up is a lot of work. The amount of debris is a lot and it is a continuous clean-up. It is worrisome in terms of hazards, mess, and safety in terms of hitting submerged debris. Additional shipping from containers and oil is not a positive development. It impacts Maa-nulth's culture by taking people away from activities and it has also impacted the wildlife and beaches. It scares the youth and they live in fear of what is coming next (i.e., oil spill or containers washing up). Maa-nulth currently has five to six generations of youth who have not had access to resources. Maa-nulth has paid the price and wants to get food security back on track. There is need for balance between marine highway use and cultural subsistence activities. As Treaty partners, all shipping lanes in their territory should be considered.
- IAAC noted that containers going overboard is included in section 15.1 of the draft Joint Guidelines. If Maa-nulth can provide further information to the proponent on what assessment is required. Maa-nulth is also welcome to run their own assessment and IAAC is happy to help support this work.
- Maa-nulth shared that containers going overboard was not properly assessed in RBT2. Given the MV Zim Kingston incident, this should be prioritized.
- Maa-nulth has information that shows both impacts in the northern and southern areas. This triggers the obligation on the Crown to consult. The consultation needs a fleshing out of what the potential impacts are with the impacted Treaty partners. The Indigenous nations in the north would lead that information and assessment. Maa-nulth needs further information about routes, marine mammals, tidal elements and underground canyons. These are things that should be captured in the assessment and the starting point is whether there is a potential impact or not. From Maa-nulth's perspective, there are impacts in the north as well as the south. Looking down the road, if the project proceeds to an assessment and there are draft conditions produced it would be important for Maa-nulth from a scoping perspective that the



conditions could apply to both the southern and northern areas. Anything in the care and control of the proponent, the conditions should apply to both the southern and northern areas.

- Maa-nulth shared that if the entire territory is not considered, it implies that it does not matter. Maa-nulth does not want this to be the standard.
- IAAC will take this information back and follow-up in a future meeting to keep this discussion moving.

### **Draft Joint Guidelines – Short Sea Shipping**

- IAAC shared that Maa-nulth's comments on short sea shipping could benefit from more information. Maa-nulth does not have enough information to comment on what the potential impacts could be from short sea shipping. There are Maa-nulth interests in the Fraser River watershed (i.e., fish, sacred principal and wildlife species). There are interests within their respective territories and if short sea shipping passes through them, then Maa-nulth would have a role. More information is needed if it is proposed to be in the project assessment.
- Hišuk ma ćawak concept - there is no way in a day, month or decade that anyone can fully understand this concept. It means everything is connected and it is a way of thinking (i.e., culture and a way of life). Whatever Maa-nulth does in the territory and on the coast, everything is related to a lesser or more degree. The sturgeon in the Fraser River are impacted by short sea shipping. Maa-nulth harvests sturgeon responsibly because of the understanding that everything is connected. It connects the north, south and Fraser River waters.
- IAAC asked how Maa-nulth would like to bring core concepts or ideas into their section of the draft Joint Guidelines as way of honouring this. This is a different way of working with the proponent and creating understanding. Maa-nulth's principles of engagement are in their section and they are the key to see things differently.
- Maa-nulth shared they have a good relationship with the proponent.

### **Closing Remarks**

- Maa-nulth is excited to engage on future assessments because cumulative effects is finally a topic that can be discussed. It is exciting to know there can be conversations that consider future generations.
- Maa-nulth is happy about the positive relationship with IAAC and BCEAO, but still acknowledges there is work to do on this project.
- Maa-nulth wants all parties to understand their relevant mandates and roles. The major importance of understanding respective roles and that none of the parties are decision-makers, but rather all parties are influencers.
- Maa-nulth shared that the northern domestic fishing area is a must-have or a need-to-have. There are five Indigenous nations and they all need to be considered.
- Maa-nulth shared that when working with the proponents, the precautionary principle needs to be taken with regards to respecting the relationship and interests of Canada, BC and Maa-nulth. This is fundamental and Maa-nulth would appreciate the Crown carrying this message.

**Next steps**

- IAAC will share the draft meeting notes with Maa-nulth.
- IAAC would like to meet in a week to finalize the draft Joint Guidelines.