



# THE FIRST NATIONS OF MAA-NULTH TREATY SOCIETY

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Website: [www.maanulth.ca](http://www.maanulth.ca)

May 2, 2022

Impact Assessment Agency of Canada  
Attention: Ian Ketcheson  
Director General, Crown Consultations

VIA EMAIL

Dear Mr. Ketcheson:

**Re: Deltaport Expansion – Berth Four Project**

We write in response to the Impact Assessment Agency's (the "Agency's") proposal regarding the scoping of the proposed Deltaport Expansion – Berth Four Project (the "Project"), delivered to our legal counsel on April 22, 2022 (the "Proposal").

The Maa-nulth Treaty Society Board and the Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations Executive have considered your Proposal and cannot accept it in its present form. The rationale provided for excluding our northern Domestic Fishing Area (DFA-North) from the marine shipping scope does not meet the Crown's obligations to us as Treaty partners.

The fact that fewer Project-vessels may pass through the DFA-North than the DFA-South is not sufficient grounds to exclude the DFA-North from the Project scope. As demonstrated by your supporting data, including the port rotation data provided by the proponent, Project-vessels will pass through the DFA-North frequently, at least on a weekly basis.

This alone triggers your obligations under the Maa-nulth Treaty, federal law and common law, to assess the impacts of the Project on us, and to ensure appropriate mitigation and accommodation measures are in place if the Project proceeds. We remind you that those obligations are on the high-end of the *Haida* spectrum, given the established nature of our rights.

Further, your suggestion in the Proposal that it is challenging to link traffic in the DFA-North to the Project is inconsistent with the mapping you provided us. That mapping shows a very clear link between traffic in the DFA-North and the Project.



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ANCIENT SPIRIT, MODERN MIND



Our letter dated December 27, 2021 contained extensive submissions on why, in our view, marine shipping for the Project should be scoped to the outer limits of the Exclusive Economic Zone (200nm) adjacent to both the DFA-South and the DFA-North. We continue to hold that view.

We built on those submissions during several meetings with your team, where we shared the importance of our sacred principles, our Treaty partnership and our mutual goal of reconciliation in determining the scope of the Project. We also shared Indigenous Knowledge demonstrating the significant impact past marine incidents have had on our communities, including the recent Zim Kingston incident. Within days of that incident, we saw goods floating in waters within the DFA-North.

We acknowledge that your Proposal extends marine shipping for this Project to a greater extent relative to past marine shipping projects. However, the proposed scoping excludes an important and distinct Treaty area impacted by the Project (i.e. the DFA-North). The Proposal to assess that area in the Maa-nulth specific section of the Guidelines lacks detail and would leave us without the full range of tools to mitigate impacts in the DFA-North, by excluding project conditions as a potential means to mitigate impacts.

We acknowledge that the Crown has historically been reluctant to impose conditions on marine shipping through impact assessments. However, with the rise in marine shipping projects, we are seeing more and more conditions extending to marine shipping. As it should be. Project conditions are an important tool to mitigate impacts unique to a project and to mitigate impacts that are not yet regulated by law.

In our view, they are also appropriate to impose on terminal operators, given the significant influence those operators have over marine shipping. Without marine shipping through both the DFA-South and the DFA-North, this would not be a Project. We should not be limited to negotiating mitigation and accommodation measures for the DFA-North bilaterally with the proponent or the Crown on vague and uncertain terms.

We request a government-to-government meeting to discuss this matter further, with our respective decision-makers present. We also request a further extension to the legislated timeline for the planning phase of the assessment so that we can attempt to resolve this matter by consensus as Treaty partners.

We can discuss an appropriate timeframe for the extension during our meeting. While we are committed to a timely resolution, the extension previously granted to the proponent (to May 31, 2022) is not sufficient time for this foundational work.



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Huu-ay-aht First Nations | Ka:'yu:k't'h'/Che:k'tles7et'h' First Nations

Toquaht Nation | Uchucklesaht Tribe Government | Yuułu?ił?atł Government – Ucluelet First Nation

We look forward to hearing from you.

Yours truly,

<Original signed by>

<Original signed by>

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Charlie Cootes  
President  
Maa-nulth Treaty Society

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Michael (Tony) Hansen  
Legislative Chief  
Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations

Cc: Maa-nulth First Nations  
Jocelyn Harrington, IAAC  
Brendan Mather, BCEAO



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