

Appendix D.11 – Pauquachin First Nation

I - Background Information

Pauquachin First Nation (Pauquachin) is an Aboriginal group whose traditional territory is located on southern Vancouver Island in British Columbia (BC), in the areas surrounding Victoria and the adjacent Salish Sea. Pauquachin (pronounced “*Pak-quw-chin*”) has filed a *Writ of Summons* as part of the Saanich Nation asserting Aboriginal title to a territory identified in the writ.

As of July 2016, there were 398 registered Pauquachin members, of whom 284 live on reserve and 114 live off reserve. There are three Pauquachin reserves: *Cole Bay 3*, *Hatch Point 12*, and *Goldstream 13*. *Cole Bay 3* is Pauquachin’s primary reserve, home to its band offices and the majority of its members.

As part of the Saanich/Senchothen ethno-cultural group, Pauquachin speaks a Salish dialect known as “North Straits Salish.” According to 2011 census data, approximately 10.9% of Pauquachin members speak North Straits Salish at home and a further 9.4% have some knowledge of the language.

II - Preliminary Strength of Claim Assessment

- The marine shipping route would pass through approximately 30 kilometers (km) of the eastern portion of Saanich Nation’s traditional territory.
- The Province of BC understands that Pauquachin has Douglas Treaty rights to carry out fisheries and hunt as formerly within its historic traditional territory. Ethnohistoric evidence indicates that the Pauquachin community was in Cole Bay on the western side of the Saanich Peninsula. Ethnographic sources associate the Pauquachin, Tsartlip, Tseycum and Pauquachin First Nations with the Saanich Peninsula, Goldstream River, and the southern Gulf Islands (including the southern portion of Saltspring Island, Sidney Island, Stuart Island, Pender Islands, Mayne and Saturna Islands).¹
- Canada recognizes the Douglas Treaties and understands that Pauquachin has members who are descendants of one or more signatories to one or more Douglas Treaties. Canada remains committed to working toward a common understanding of the content and scope of the Douglas Treaties with Pauquachin, to implement the treaty through agreements with the Crown, and to explore opportunities to honour and recognize the Douglas Treaties.

II - Involvement in the NEB and Crown Consultation Process

Given the nature and location of the Project, and the potential impacts of the Project on Pauquachin’s Aboriginal Interests, the Crown is of the view that the legal duty to consult Pauquachin lies at the middle portion of the *Haida* consultation spectrum. Pauquachin was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Pauquachin opportunities to be consulted at a deeper level.

¹ Pauquachin First Nation: Review of Ethnographic and Historical Sources. Prepared by Ministry of Justice, Legal Services Branch, Aboriginal Research Division. September 5, 2013.

Pauquachin participated in the National Energy Board (NEB) review process as an intervenor and submitted written evidence, sent additional correspondence to the NEB, and responded to the Crown's Information Tracking Table Information Request by further elaborating their concerns [[A71205](#)].

Pauquachin has had additional interaction with the Major Projects Management Office (MPMO) outside of the formal NEB process. Pauquachin has sent and received correspondence and emails and had an early engagement meeting in June 2014.

Pauquachin signed a contribution agreement with the NEB for \$24,910 in participant funding plus travel for one to the hearing. The MPMO offered Pauquachin \$5,400 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Pauquachin an additional \$6,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Pauquachin signed a contribution agreement with the MPMO for a total of \$5,400 in allocated funding.

Pauquachin signed a letter of support with the proponent on May 27, 2015. The Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Pauquachin in an attempt to offset potential impacts, should the Project proceed.

The Crown provided a first draft of this Report to Pauquachin for review and comment on August 17th, 2016. The Crown did not receive comments from Pauquachin on the draft Report.

A second draft of this Report was submitted to Aboriginal groups for review and comments on November 1, 2016. Pauquachin provided a separate Aboriginal group submission to the Crown on November 15, 2016. This letter provided the Crown with some comments for the second draft of this Report.

III - Summary of Pauquachin's Key Issues and Concerns Raised

The Crown has gained its understanding of Pauquachin's issues and concerns through the community's involvement in the NEB process, including responses provided to the Crown on its Information Request (IR) addressed to them, and through other engagement with the Crown. In addition, the Crown has considered information regarding the proponent's engagement with Pauquachin, as described in the proponent's *Aboriginal Engagement Report (2016)*.

This section offers a summary of the key issues raised by Pauquachin, and does not present the views of the Crown as to whether it agrees or not with the issues. The Crown's assessment of the impact of the Project presented on the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of Pauquachin's key Project-related issues and concerns are summarized below.

Cultural and Spiritual Impacts

Pauquachin have expressed that culture is of great importance to the Pauquachin people. Pauquachin stated that SENCOTEN is not just a language, and each place name is not just a name; rather, each has a

story and history behind the name. Pauquachin stated that it is important to understand through the consultation process, and capture in the consultation Report, the significance this has on who the Pauquachin people are—that this is all of their territory, and it is where their history resides.

- Pauquachin is concerned that tanker traffic related noise and other disturbance will impact their cultural and ceremonial activities either through disruption or by alienating Pauquachin members from some parts of their territory;
- Pauquachin stated that this would complicate their ties with other closely related Indigenous communities and expose their territory, including important sacred sites, to Project-related risks;
- Pauquachin is concerned that archaeological sites may be impacted by vessel-wake caused shoreline erosion or by accidental oil contamination; and
- Pauquachin is concerned about effects, including sensory effects to the Southern Vancouver Island's orca population and marine species.

Methodology, Process, and Consultation

- Pauquachin has filed a letter in support of the Project but they remain concerned about the low level of direct engagement on the part of the federal Crown;
- Pauquachin is concerned about the NEB hearing process, including insufficient funding to meaningfully participate, NEB's refusal to permit oral cross-examination of the proponent, refusal to consider the environmental and socio-economic effects of upstream activities and downstream uses, and the lack of public confidence in the hearing process; and
- Pauquachin stated that they did not have sufficient funding to hire an expert to review and comment on the credibility of evidence submitted by the proponent and intervenors.

Cumulative Effects

- Pauquachin is seeking to protect their remaining traditional marine resources, which have been negatively impacted by increased traffic in Saanich Inlet and numerous barriers to access (i.e. pollution, over-harvesting elsewhere, travel costs, diminished relationship networks, and perception of trespassing near private property); and
- Pauquachin is concerned the Project, and the Project's contribution to cumulative effects, has the potential to negatively impact the environment, traditional territory, marine resources and waters.

Economic Impacts

- Pauquachin is also worried about the impact increased tanker traffic or a spill would have on their ability to develop a recreational and tourism industry; and
- Pauquachin stated that the wealth of the Project and benefits to Canada will be secure and long-term and, therefore, First Nations need a secure and long-term revenue stream that would allow them to plan and make long-term investments.

Impacts from Increased Marine Vessel Traffic

- Pauquachin is concerned that increased tanker traffic could induce changes in waterfowl behavior, thus limiting their ability to harvest preferred species;
- Pauquachin is worried about changes in air quality due to marine vessel venting;
- Pauquachin note that important harvesting locations for their preferred marine resource species are located within designated shipping lanes and thus would be adversely affected by increased tanker traffic; and
- Pauquachin is worried that increased tanker traffic would increase the likelihood of marine mammal strikes or other conflicts.

Health and Human Safety

- Pauquachin is worried that loss of access to, or contamination of, marine resources would adversely impact their health by limiting their access to nutritious country foods; and
- Pauquachin is concerned that increased tanker traffic will increase the likelihood of a collision between a tanker and a vessel owned or operated by Pauquachin members, which could result in damage or loss of the vessel, gear and injury or death of Pauquachin members.

Impacts on Hunting, Fishing, and Harvesting Rights

- Pauquachin assert Aboriginal and Douglas Treaty rights and note that their ability to exercise these rights would be negatively impacted by increased tanker traffic, especially their ability to harvest marine resources, and hunt deer and waterfowl;
- Pauquachin is concerned about effects to commercial fishing, changes in income patterns and economic impacts resulting from the Project; and
- Pauquachin is concerned about the introduction of invasive species, alteration of watersheds, and effects on water quality.

Accidents and Malfunctions

- Pauquachin understand that a major tanker spill would spread quickly given the regional currents, impacting hundreds of sites (including archaeological sites), and destroy most or the entire marine ecosystem and are also concerned about the potential adverse impacts associated with spill cleanup activities;
- Pauquachin is concerned that increased tanker traffic and the increased risk of an accidental spill will disrupt their Aboriginal commercial fishing activities;
- Pauquachin is concerned about changes in water quality due to accidental bilge dumping and shoreline contamination;
- Pauquachin is concerned about the possibility that diluted bitumen may sink and the lack of effective spill response measures in the event it does. Pauquachin is concerned about the probability of a spill, and has identified the need for mitigation measures to reduce the probability;
- Pauquachin is concerned an oil spill could reduce the quality and quantity of marine resources, damage habitat and food sources, damage sacred sites and impact health. Pauquachin is

concerned a tanker-related spill could have economic impacts, including a loss in property value, loss in revenues from or loss of an opportunity to develop reserve or other lands Pauquachin currently has or acquires an interest in; and

- Pauquachin is concerned that an accident or malfunction of Project-related tankers could potentially impact traditional marine use (TMU) by disrupting travelways, and restricting the times and locations in which Pauquachin can harvest marine resources, exercise traditional rights and engage in traditional ceremonies. Pauquachin is concerned about disruption of subsistence activities and cumulative effects on traditional subsistence activities.

Accommodation Proposals

During the Crown consultation meeting of May 13, 2016, Pauquachin asked for the following accommodation proposals to be considered:

- Development of a Salish Sea Stewardship Foundation; and
- Pauquachin would like to explore how the Project could benefit the Pauquachin.

Pauquachin provided the Crown with other accommodation proposals in their separate submission to Cabinet. In this document, Pauquachin states that the following recommendations should be implemented before the Project is approved:

- Emergency response towing vessels: In addition to escort tugs for Project-related tankers which the proponent has committed to and is ensured through the NEB proposed conditions for the Project; Pauquachin considers that emergency response towing vessels should be stationed at strategic locations along the marine shipping route. Pauquachin believes this measure is important to ensure a world-class spill prevention system;
- Salvage Personnel and Equipment: Pauquachin considers that a salvage resident personnel as well as salvage equipment should be stationed at strategic locations along the marine shipping route. Pauquachin believes this measure is important to ensure a world-class spill prevention system;
- Fate and behavior of Diluted Bitumen: Pauquachin requests the Crown to conduct, commission, fund, or require additional research on fate and behavior of diluted bitumen in marine environment. The Crown should consult Pauquachin about the outcome of that research. Pauquachin acknowledges the provincial government's condition #33 which will require the proponent to develop research on this matter; however, Pauquachin is concerned regarding the timing and independence of that research. Pauquachin believes that this research should be undertaken ideally before the Project is approved, and at a minimum before the Project is operational. Pauquachin considers that the proponent should not undertake or direct the research;
- Spill Response Base on Saanich Peninsula: Pauquachin acknowledges that the Western Canada Marine Response Corporation (WCMRC) is currently planning to establish a new response base on the Saanich Peninsula to improve spill response capacity. Pauquachin considers that regardless of whether the Project proceeds, a spill response base should be established on the Saanich Peninsula;

- **Spill Response Capacity:** Pauquachin considers that the Crown should engage in further consultations with Pauquachin regarding WCMRC's spill response capacity, directly or through other spill response agencies, and increase the capacity required under federal law to an appropriate level. Pauquachin is concerned that on the event of a spill the WCMRC will not have sufficient capacity to respond. Pauquachin states that this issue will be addressed through the Area Response Planning (ARP) initiative. Pauquachin asks that the recommendations from that initiative should be implemented at a minimum before the Project is operational;
- **Planning and Training:** Pauquachin states that the Crown should either recommend or implement improvements to address any deficiencies in the responses to the May2016 diesel spill in Esquimalt Harbour and the 2015 oil spill in English Bay. Pauquachin wants the Crown to consider the possibility of training one or more Pauquachin members in spill response measures. Pauquachin believes that First Nations could play an important role in early response to spills if they are equipped with appropriate training and gear; and
- **Spill Compensation Regime:** Pauquachin is concerned that the amount available for compensation in case of marine-based oil spills may not be adequate, and that any damages to Pauquachin's culture and Aboriginal and Treaty rights may not be sufficiently compensated under the regime.

Section 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups. Accommodations proposed by Pauquachin that the Crown has not responded directly via letter will be otherwise actively considered by decision-makers weighing Project costs and benefits with the impacts on Aboriginal Interests.

Pauquachin's Response to NEB Recommendation Report

No specific comments received by the Crown from Pauquachin on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Pauquachin's Aboriginal Interests

A discussion of the Crown's assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests is provided in Sections 2.4.3 and 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted traditional territory of each Aboriginal group, including areas within the vicinity of marine shipping related to the Project, may be particularly important and valuable for specific qualities associated with traditional cultural or spiritual practices. These areas may also be used for traditional harvesting activities (e.g., hunting, trapping, fishing and gathering), by individual members or families.

The discussion in this section focuses on potential impacts of the Project on Pauquachin's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Pauquachin's ability to practice Aboriginal Interests. Where information was available, the Crown considered the following:

- Biophysical effects to values linked to Aboriginal rights (e.g., fish) that were assessed by the NEB;

- Impacts on specific sites or areas identified as important to traditional use; and
- Impacts on social, cultural, spiritual, and experiential aspects of exercising Aboriginal Interests.

Additional factors considered in the assessment of impacts on Aboriginal Interests are described in Section 2.4.3 of this Report. The Crown’s conclusion on the seriousness of Project impacts on Pauquachin’s Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Pauquachin, Pauquachin’s engagement with the proponent, proponent commitments, recommended NEB conditions, as well as relevant proposed conditions of any Environmental Assessment Certificate (EAC) issued by the Province.

Pauquachin completed a traditional marine resource use (TMRU) study in 2015 entitled “*Pauquachin Traditional Marine Use Study*” for the Project ([A4L6I5](#)). The focus of the study was on Crown lands and waters within the asserted territory of Pauquachin crossed by the Marine Regional Study Area (RSA)². In its *Supplemental Technical Report* ([A4S7I8](#)), the proponent estimated approximate distances and directions from the marine shipping lanes based on information in Pauquachin’s report. Additional TMRU information for Pauquachin was presented in *Volume 8B* ([A3S4K3](#)) of the Project application.

As a coastal First Nation, Pauquachin’s identity is closely tied to the sea and their access to marine resources. Pauquachin people prefer eating marine species like: salmon, cod, halibut, herring, oysters, clams, and cockles. They also have a spiritual connection with orca whales, which they also view as a proxy for the health of the marine environment.

Impacts on Hunting, Trapping, and Plant Gathering

As summarized in the TMRU study, community members historically hunted deer, elk, grouse, rabbit, sea lions and seals to supplement the primary diet of salmon, and gathered cedar bark and logs, nettles, bullhead, seaweed, hog fennel, cranberries and blueberries. Community members currently hunt ducks, geese, bear and deer, and gather seaweed and berries.

During the TMRU study, Pauquachin identified 14 hunting sites, of which 12 are within the Marine RSA. The shipping lanes are crossed to access two of these sites: Salish Sea and Haro Strait, east of Moresby Island. Pauquachin identified 10 plant gathering sites within the Marine RSA, of which the shipping lanes are crossed to access sites at Blakey Island and the coast of the Salish Sea.

In addition to providing traditional use information, Pauquachin raised specific concerns with potential Project impacts relating to their hunting, trapping and plant gathering activities:

- Pauquachin is concerned that increased tanker traffic could induce changes in waterfowl behavior, thus limiting their ability to harvest preferred species; and

² The area extending beyond the LSA boundary (i.e. the zone of influence or area where the element and associated indicators are most likely to be affected by Project-related marine vessel traffic) where the direct and indirect influence of other activities could overlap with Project-specific effects and cause cumulative effects on the environmental or socio-economic indicator.

- Pauquachin note that their ability to exercise their rights would be negatively impacted by increased tanker traffic, especially their ability to hunt deer and waterfowl.

The general direct and indirect effects of the Project on hunting, trapping, and gathering, along with key mitigation measures, are described in Section 4.3.1 of the main body of this Report. Conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with hunting, trapping, and plant gathering sites (Section 4.3.1 of this Report). The proponent would implement a range of mitigation measures that would reduce potential effects associated with Pauquachin's hunting, trapping, and plant gathering activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, scheduling and notification of Project activities (via the proponent's marine public outreach program), and a marine mammal protection program.

In consideration of the information available to the Crown from the NEB process, consultation with Pauquachin, Pauquachin's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant proposed conditions of any EAC issued by the Province, Project-related marine shipping activities are expected to result in negligible-to-minor impacts on Pauquachin's hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing, and Marine Fishing and Harvesting

As described in the TMRU study, Pauquachin community members regularly rely on inter-regional trade and kinship networks to access marine resources. Marine resources are the preferred part of Pauquachin diets; clams and salmon are important resources for community members. Species harvested by community members include bivalves (such as clams, cockles, butters, steamers, oysters, mussels and chitons), crab, sea urchins, salmon, rock cod, ling cod, red snapper, flounder, sole, halibut, squid, octopus, herring and herring roe. During the TMRU study, Pauquachin identified 27 fishing sites within the Marine RSA. The shipping lanes are crossed to access six fishing sites: Salish Sea, Stuart Island, San Juan Islands, Point Roberts, Johns Island, and Sucia Island. In Volume 8B, six additional fishing and marine harvesting sites were identified within the Marine RSA, of which shipping channels are crossed to access one site at Fulford Harbour.

In addition to providing traditional use information, Pauquachin raised specific concerns with potential Project impacts relating to their marine fishing and harvesting activities:

- Pauquachin is seeking to protect their remaining traditional marine resources, which have been negatively impacted by increased traffic in Saanich Inlet and numerous barriers to access (i.e. pollution, over-harvesting elsewhere, travel costs, diminished relationship networks, and perception of trespassing near private property);
- Pauquachin is worried that increased tanker traffic would increase the likelihood of a collision with Pauquachin fishing vessels, marine mammal strikes, or other conflicts;

- Pauquachin noted that important harvesting locations for preferred marine resource species are located within designated shipping lanes and thus would be adversely affected by increased tanker traffic;
- Pauquachin is worried that loss of access to, or contamination of, marine resources would adversely impact their health by limiting their access to nutritious country foods;
- Pauquachin notes that their ability to exercise their rights would be negatively impacted by increased tanker traffic, especially their ability to harvest marine resources;
- Pauquachin understand that a major tanker spill would spread quickly given the regional currents destroying most or the entire marine ecosystem;
- Pauquachin is concerned that increased tanker traffic and the increased risk of an accidental spill will disrupt their Aboriginal commercial fishing activities;
- Pauquachin is concerned about changes in water quality due to accidental bilge dumping and shoreline contamination; and
- Pauquachin is also concerned about the potential adverse impacts associated with spill cleanup activities.

The direct and indirect effects of the Project on Aboriginal rights to marine fishing and harvesting, along with key mitigation measures, are described in Section 4.3.3 of the main body of this Report. Project-related marine vessels would increase the amount of marine traffic traveling in the established shipping lanes. The *NEB Recommendation Report* found that project effects on marine fish and fish habitat are expected to be low to moderate and effects on marine mammals are expected to be low.

Project-related marine vessels are expected to cause temporary disruptions to Pauquachin's marine fishing and harvesting activities. The Crown appreciates that community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Pauquachin community members to take measures to reduce potential disruptions from tankers and allow planning for fishing activities to take place that minimizes disturbance from Project-related tankers.

The conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with marine fishing and harvesting sites (Section 4.3.3 of this Report). The proponent would implement a range of mitigation measures that would directly or indirectly reduce potential project-related marine fishing impacts on Pauquachin's marine fishing and harvesting activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, and scheduling and notification of Project activities (via the proponent's marine public outreach program).

In consideration of the information available to the Crown from the NEB process, consultation with Pauquachin, Pauquachin's engagement with the proponent, the proponent's proposed mitigation

measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued by the Province, Project-related marine shipping activities are expected to result in minor impacts on Pauquachin's marine fishing and harvesting activities.

Impacts on Other Traditional and Cultural Practices

As described in the TMRU study, three travelways within the Marine RSA were identified: Salish Sea, Mayne Island to Cowichan, and Active Pass. The shipping lanes are crossed when using the travelways in the Salish Sea. Pauquachin identified 12 gathering places of which 11 are located within the Marine RSA. The shipping lanes are crossed to access four of these sites: Salish Sea, San Juan Islands, Point Roberts, and Stuart Island. One sacred area, on Samuel Island, was identified by Pauquachin within the Marine RSA during the TMRU study. The shipping lanes are not crossed to access this site. In *Volume 8B*, summer camps in the Gulf Islands were identified in the Marine RSA. Although the specific locations were not provided, shipping lanes are crossed to access the sites.

In addition to providing traditional use information, Pauquachin raised specific concerns with potential Project impacts relating to other traditional and cultural practices:

- Pauquachin is concerned that tanker traffic related noise and other disturbance will impact their cultural and ceremonial activities, through disruption/alienation of Pauquachin members from some parts of their territory and disturbance of their spiritual connection with the orca;
- Pauquachin is concerned that this would complicate their ties with other closely related Indigenous communities and expose their territory, including important sacred sites, to Project-related risks;
- Pauquachin is concerned that archaeological sites may be impacted by vessel-wake caused shoreline erosion or by accidental oil contamination; and
- Pauquachin is concerned that a major tanker spill would spread quickly given the regional currents, impacting hundreds of sites, including archaeological sites.

Pauquachin identified cultural use of or concerns regarding Southern resident killer whales during the NEB and Crown consultation processes. The *NEB Recommendation Report* concluded that the increase in marine vessel traffic associated with the Project is likely to result in significant adverse effects on the traditional Aboriginal use associated with the Southern resident killer whale. The Crown understands that the Southern resident killer whale population is in decline, and that additional adverse environmental effects from project-related marine shipping would be considered significant.

The general direct and indirect effects of the Project on other traditional and cultural practices, along with key mitigation measures, are described in Section 4.3.4 of the main body of this Report. Conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown understands that there will be temporary interruptions to Pauquachin's traditional and cultural practices, and there could be reduced access to traditional and cultural sites during Project operational activities. It is noted that the proponent has committed to ongoing engagement with

Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

In consideration of the information available to the Crown from the NEB process, consultation with Pauquachin, Pauquachin's engagement with the proponent, the proponent's proposed mitigation measures and the recommended NEB conditions, as well as relevant Provincial proposed conditions of any EAC issued by the Province, Project-related marine shipping activities are expected to result in moderate impacts on Pauquachin's other traditional and cultural practices.

Impacts Associated with Accidental Tanker Spills

Pauquachin expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including the effects of a potential spill on hundreds of sites (including archaeological sites), the marine ecosystem, their Aboriginal commercial fishing activities, water quality, reduction in the quality and quantity of marine resources, the damage on habitat and food sources, the damage on sacred sites, and health issues. Pauquachin is also concerned about the economic impacts a potential spill would have in their community, as well as the impacts in the TMU by disrupting travelways, and restricting the times and locations in which Pauquachin First Nation can harvest marine resources, exercise traditional rights and engage in traditional ceremonies. Additionally, Pauquachin First Nation is concerned about disruption of subsistence activities and cumulative effects on traditional subsistence activities.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a tanker spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. Section 4.3.6 of the main body of this Report sets out the impacts associated with accidental spills from marine shipping vessels. In consideration of this information and analysis, as well as information available to the Crown on Pauquachin's Aboriginal Interests and concerns raised during the NEB process and Crown consultation process, an accidental oil spill associated with the Project could result in minor to serious impacts, with low likelihood, on Pauquachin's Aboriginal Interests. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill.³

VI - Conclusion

The Crown understands the Project could adversely impact the ability of Aboriginal groups to use lands, waters and resources for traditional purposes. The Crown acknowledges that proponent commitments, recommended NEB conditions and the existing marine safety regime would only partially address these ongoing burdens and risks. Under the typical conditions for marine vessel use of the area between the Westridge Marine Terminal and the 12 nautical mile limit (J-buoy) through the Salish Sea and Strait of Juan de Fuca, the Crown expects impacts of the marine-shipping component of the Project on the exercise of Pauquachin's Aboriginal Interests would be up to moderate.

³ Trans Mountain Final Argument, p. 85 and 207

However, given existing use of the marine shipping corridor within areas proximate to the exercise of Pauquachin's Aboriginal Interests and the potential severity of the impacts of a marine spill on the exercise of Pauquachin's Aboriginal Interests, the federal Crown is considering additional measures to further offset the potential impacts of the marine-shipping component of the Project on Pauquachin. Please see Sections 4 and 5 of the main body of this Report for a discussion of proposed accommodation measures.

In addition, the Crown is aware that the proponent has entered into a Mutual Benefits Agreement with Pauquachin in an attempt to offset potential impacts, should the Project proceed.