

Appendix D.21 – Tseycum First Nation

I - Background Information

Tseycum First Nation (Tseycum) is located in British Columbia (BC) on the northwest side of the Saanich Peninsula on Vancouver Island, adjacent to the Saanich Inlet. Tseycum is a party to a *Writ of Summons* as part of the Saanich Nation dated 2003. Tseycum has five reserve lands: Bare Island no. 9 (shared with Tseycum First Nation), Goldstream no. 13 (shared with Malahat First Nation, Pauquachin, Tsartlip and Tseycum First Nation), Pender Island no. 8 (shared with Tseycum First Nation), Saturna Island no. 7 (shared with Tseycum First Nation) and Union Bay no. 4. Cumulatively, Tseycum territory covers 196.3 hectares. As of July 2016, Tseycum's registered population totals 187. Tseycum speak the Sencoten language.

II - Preliminary Strength of Claim Assessment

- Approximately 30 kilometers (km) of the marine shipping route would pass through the eastern portion of the asserted traditional territory of the Saanich Nation. The distance from the main Tseycum community to the marine shipping lane is approximately 2 km.
- The Province of BC understands that Tseycum has Douglas Treaty rights to fish as formerly and hunt on occupied lands. Ethnohistoric evidence suggests that the Tseycum originated from Tsehum Harbour and later moved to Patricia Bay on the western side of Saanich Peninsula. Ethnographic sources associate the Tseycum, 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).
- Canada recognizes the Douglas Treaties and understands that Tseycum 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 Tseycum and to explore opportunities to honour and recognize the Douglas Treaties.

III - Involvement in the NEB and Crown Consultation Process

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

Tseycum participated in the National Energy Board (NEB) review process as an intervenor, but did not submit an application for NEB participant funding or actively participate in the process aside from the Oral Traditional Evidence Hearing in Victoria, BC. The Crown understands that Tseycum did not provide information requests, a final written argument, or an oral summary argument to the NEB.

The Major Projects Management Office (MPMO) offered Tseycum \$12,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Tseycum \$6,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Tseycum did not make use of these funds.

The Crown provided a first draft of the Consultation and Accommodation Report (Report) to Tseycum for review and comment on August 17, 2016. The Crown did not receive comments from Tseycum on the draft Report. A second draft of this Report was provided to Aboriginal groups for review and comment on November 1, 2016. The Crown has not received comments from Tseycum.

IV - Summary of Key Tseycum Issues and Concerns Raised

This section offers a summary of the key issues raised by Tseycum, 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 in the subsequent section incorporates a consideration of these issues and includes the Crown's views and conclusions. The Crown's understanding of Tseycum's key Project-related issues and concerns are summarized below:

Cultural and Social Impacts

- Potential for vessel wakes from tankers and increased marine shipping to impact gravesites vis-a-vis shoreline erosion.

Methodology, Process and Consultation

- Concern that the NEB-led consultation process was inadequate and inconsistent with a traditional First Nations approach, where First Nations would typically take a more consensus-based approach if they wanted to traverse or otherwise utilize the traditional territory of another First Nation.

Cumulative Effects

- Pollution from past industrial development projects has already reduced coastal bird populations and made oyster beds less productive and edible.

Economic Impacts

- Interest in revenue sharing arrangements for all socio-economic issues, such as placing a monetary charge on tankers passing through their traditional territory.

Impacts on Harvesting Rights

- Potential infringement on Tseycum's Aboriginal Interests relating to seafood harvesting.

Marine Impacts and Accidents and Malfunctions

- Interest in spill prevention and response; and

- Potential impacts from a spill on Tseycum’s traditional food sources (particularly seafood due to Tseycum’s heavy reliance on seafood), way of life, and future economic opportunities.

Tseycum’s Response to NEB Recommendation Report

No specific comments were received on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Tseycum’s Aboriginal Interests

A discussion of the Crown’s assessment approach and understanding of the potential impacts of the Project on Aboriginal Interests are provided in Sections 2.4.3 and 4.3 of this Report, respectively. The Crown recognizes that areas within the asserted or established traditional territory of each Aboriginal group 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 Tseycum’s Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Tseycum’s ability to practice Aboriginal Interests. Where information was available, the Crown considered the following:

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- 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 Tseycum’s Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Tseycum, Tseycum’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.

Impacts on Hunting, Trapping, and Plant Gathering

Tseycum raised the following concerns regarding potential Project-related impacts on hunting, trapping and plant gathering activities:

- Cumulative impacts from the Project and pollution from past industrial development projects that have reduced coastal bird populations; and
- Potential impacts on traditional food sources.

The general direct and indirect effects of the Project on hunting, trapping, and gathering activities, along with key mitigation measures, are described in Sections 4.3.1 and 4.3.3 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 (Sections 4.3.1 and 4.3.3 of this Report). The proponent would implement a range of mitigation measures that would reduce potential effects associated with Tseycum'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 Tseycum, Tseycum'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 a negligible-to-minor impact on Tseycum's hunting, trapping and plant gathering activities.

Impacts on Marine Fishing and Harvesting

Tseycum raised the following concerns regarding potential Project-related impacts on marine fishing and harvesting activities:

- Cumulative impacts from the Project and pollution from past industrial development projects that have made oyster beds less productive and edible;
- Potential infringement on Tseycum's Aboriginal Interests relating to seafood harvesting; and
- Potential impacts on Tseycum's traditional food sources, particularly seafood.

The general direct and indirect effects of the Project on marine fishing and harvesting activities, along with key mitigation measures, are described in Section 4.3.3 of the main body of this Report. The conditions in the *NEB Recommendation Report*, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations associated with marine fishing and harvesting sites (Section 4.3. 3 of this Report). With regards to specific concerns raised by Tseycum, the proponent would implement a range of mitigation measures to reduce potential effects associated with Tseycum'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 marine public outreach program).

In consideration of the information available to the Crown from the NEB process, consultation with Tseycum, Tseycum'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 negligible-to-minor impacts on Tseycum's marine fishing and harvesting activities.

Impacts on Other Traditional and Cultural Practices

Tseycum raised concerns regarding potential Project-related impacts on other traditional and cultural practices, including potential for wake from tankers and increased marine shipping to impact gravesites vis-a-vis shoreline erosion.

The general direct and indirect effects of the Project on traditional and cultural practices, along with key mitigation measures, are described in Section 4.3.4 of the main body of this Report. Marine mammals are of importance to many Coast Salish Aboriginal groups, and killer whales specially hold strong spiritual and cultural importance for many Aboriginal groups. The NEB concluded that effects on the endangered Southern Resident Killer Whale and Aboriginal cultural use of Southern Resident Killer Whale from Project-related shipping activities would be significant. The Crown is not aware of any specific cultural use of or concerns regarding killer whales raised by Tseycum during the NEB and Crown consultation processes.

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 Tseycum'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 Tseycum, Tseycum'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 negligible-to-minor impacts on Tseycum's other traditional and cultural practices.

Impacts Associated with Accidental Tanker Spills

Tseycum identified concerns related to accidental oil spills, including potential impacts from a spill on Tseycum's traditional food sources (particularly seafood due to Tseycum's heavy reliance on seafood), way of life, and future economic opportunities.

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 potential impacts associated with accidental spills from Project-related marine shipping vessels. In consideration of this information and analysis, as well as information available to the Crown on Tseycum'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 on Tseycum'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.¹

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 Tseycum's Aboriginal Interests would be negligible-to-minor.

However, given existing use of the marine shipping corridor within areas proximate to the exercise of Tseycum's Aboriginal Interests and the potential severity of the impacts of a marine spill on the exercise of Tseycum'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 the Tseycum First Nation. Please see Sections 4 and 5 of the main body of this Report for a discussion of proposed accommodation measures.

¹ Trans Mountain Final Argument, p. 85 and 207