

## Appendix D.4 – Halalt First Nation

### I - Background Information

Halalt First Nation (Halalt) is a Coast Salish Nation whose asserted traditional territory includes part of Southeastern Vancouver Island and the Salish Sea to the Lower Mainland of British Columbia (BC), including Vancouver, Sunshine Coast, and the area northwest of Howe Sound.

Halalt has two reserves: *Halalt Island 1* and *Halalt 2*. As of July 2016, Halalt had a registered population of 212 members, with 100 members living on-reserve and 112 members living off-reserve.

Halalt is party to the Hul'qumi'num Treaty Group *Statement of Intent*. The Hul'qumi'num Treaty Group includes: Stz'uminus (Chemainus) First Nation, Lake Cowichan First Nation, Halalt First Nation, Penelakut Tribe, Cowichan Tribes and Lyackson First Nation. The Hul'qumi'num Treaty Group is currently in Stage 4 of the BC Treaty process (i.e. Agreement-in-Principle). Halalt is a party to the Hul'qumi'num Nation protective *Writ of Summons*, which was filed in the BC Supreme Court in December, 2003, asserting Aboriginal title to a territory identified in the writ.

Cowichan Tribes, Stz'uminus, Penelakut, and Halalt are also part of the Cowichan Nation Alliance focussed on resolution of Aboriginal rights, including title, on the south arm of the Fraser River.

Halalt members historically spoke the Hul'qumi'num (pronounced “*Hul-ka-MEE-num*”) language.

### II – Preliminary Strength of Claim Assessment

- The right of way (RoW) transects the asserted traditional territory of the Hul'qumi'num, between the Westridge terminal and Surrey, and again between Chilliwack and Hope (approximately 72 kilometers [km] of new RoW). The following Project facilities are located within the asserted traditional territory of the Hul'qumi'num: Hope Station, Wahleach Station, Port Kells Station, Burnaby Terminal, and Westridge Marine Terminal (WMT). The marine shipping route would pass through approximately 265 km of Hul'qumi'num Treaty Group's traditional territory.
- The Crown's preliminary assessment of Halalt's Aboriginal rights in areas proximal to the marine shipping corridor of the Project, which transits the Strait of Georgia, is assessed as having a *prima facie* claim of Aboriginal rights ranging from weak to strong as follows. Areas of strong claims are areas within what ethnohistoric sources generally describe as pre-contact traditional territory of Halalt and where there is information of their historic use as part of their traditional seasonal round, including areas in the Strait of Georgia proximal to, and within the southern reaches of, the southern arm of the Fraser River and portions of the southern Gulf islands that lie to the west of Galiano Island and above Active Pass. Areas of weak claims include areas proximal to the Strait of Georgia north of Gabriola passage and north and south of the South arm of the Fraser River, the Strait of Georgia south of Active Pass, and areas within Haro and

Juan de Fuca Straits, which were not considered within the pre-contact traditional territory of the Halalt and/or Cowichan people<sup>1</sup>.

- The Crown's preliminary assessment of the Halalt's *prima facie* claim of Aboriginal title to upland areas proximal to the marine shipping corridor of the Project ranges from weak to moderate with the higher end of the range (i.e. moderate) pertaining to exclusive areas of known Halalt habitation and use. The Crown does not have clarity regarding how Hul'qumi'num Treaty Group members are asserting Aboriginal title in certain areas where there is limited indication that any of the Hul'qumi'num Treaty Group member First Nations could have excluded each other at 1846. For example, upland areas proximal to the marine shipping corridor, including by the southern arm of the Fraser River, the Crown would assess the *prima facie* claim of Aboriginal title of the Halalt as ranging from weak to moderate, with the stronger (i.e. moderate) claims located in proximity to uplands in the vicinity of the large village site of Tl'ektines. The Crown also does not have clarity regarding how Hul'qumi'num Treaty Group members are asserting Aboriginal title in the southern Gulf Islands that lie to the west of Galiano Island and above Active Pass and to the west of Valdes and Gabriola; in these areas, the Crown would assess the *prima facie* claim of Aboriginal title of the Halalt to upland areas as ranging from weak to weak-to-moderate as there is some indication of habitation and resource gathering sites utilized by Cowichan people likely at 1846. The following areas are generally described by ethnohistoric sources as outside the traditional territory of the Cowichan people without evidence of their occupation or use, such that there is no support for a *prima facie* claim of Aboriginal title to upland areas: proximal to the Strait of Georgia north of Gabriola passage and north of the South arm of the Fraser River, the Strait of Georgia south of Active Pass and south of the south arm of the Fraser River, and within Haro and Juan de Fuca Straits<sup>2</sup>.
- In November 2014, Cowichan Tribes, Stz'uminus First Nation, Penelakut Tribe and Halalt filed an *Amended Notice of Civil Claim* seeking a declaration of Aboriginal title to an area described as the Tl'uqtnus Lands and fishing rights to the South Arm of the Fraser River. The above assessment of the strength of claimed Aboriginal title to the upland area west of and proximate to the Tl'uqtnus/Tl'ektines site was conducted to inform the scope of consultation regarding this project. It is a preliminary assessment only, considering only information reasonably available at the time of consultation and is not based on an exhaustive review of all information and legal issues related to this potential claim, and does not reflect the Crown's opinion of whether the court will ultimately decide in favour of the First Nation in the litigation of this claim.

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<sup>1</sup> Halalt First Nation: Review of Ethnographic, Historical and Archaeological Resources. Prepared by Aboriginal Research Division, Legal Services Branch, Ministry of Attorney General. February 15, 2007. Revised December 29, 2008; The Hul'qumi'num Treaty Group: Review of Ethnographic, Historical and Archaeological Resources: Cowichan, Lake Cowichan, Halalt, Chemainus, Lyackson, Penelakut and Hwlitsum First Nations. Prepared by Aboriginal Research Division, Legal Services Branch, Ministry of Attorney General. September 8, 2009.

<sup>2</sup> Ibid

### **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 Halalt's Aboriginal Interests, the federal Crown is of the view that the legal duty to consult Halalt lies in the middle of the *Haida* consultation spectrum. Halalt was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords them opportunities to be consulted at a deeper level.

Halalt did not participate in the National Energy Board (NEB) hearing process and did not submit an application for participant funding from the NEB. No correspondence has been received from Halalt regarding the Project.

The Major Projects Management Office (MPMO) offered Halalt \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Halalt an additional \$7,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Halalt signed a contribution agreement with the MPMO for a total of \$13,000 in allocated funding.

On October 20, 2016 EAO offered \$5,000 in capacity funding to Halalt to assist with the consultation process.

Halalt signed a mutual benefits agreement (MBA) with the proponent and filed a Letter of Support for the Project with the NEB on August 5, 2015.

Halalt and the Crown met on September 28, 2016 in regards to the Project (in conjunction with other members of the Cowichan Nation Alliance).

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

A second draft of this Report was provided to Aboriginal groups for review and comment on November 03, 2016. The Crown has not received comments from Halalt.

### **IV - Summary of Key Halalt Issues and Concerns Raised**

This section offers a summary of the key issues raised by Halalt, 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 Halalt's key Project-related issues and concerns are summarized below.

The Crown has also considered information regarding the proponent's engagement with Halalt, as described in the proponent's *Aboriginal Engagement Report* (July 2016).

The Crown's understanding of Halalt's key Project-related issues and concerns is summarized below:

- Effects of an oil spill on fish, shellfish, waterfowl and plants;
- Remediation and restoration of fish stocks, herring spawn sites, shellfish and intertidal gathering areas and waterfowl populations in the event of a spill;
- Restoration of marine and riparian plants in the event of a spill;
- Impact on fishing, fish spawn collecting areas, shellfish and intertidal gathering areas, waterfowl hunting areas, plant harvesting sites, habitation and processing sites, recreation sites, and boundary marker sites;
- Impacts on food harvest for individual households, particularly around the mouth of the Fraser River;
- The need to develop full contingency plans and mitigation measures for the Fraser River that fully restores this region and Halalt's resource sites;
- The need to fully identify the risks posed to Halalt human health and their immediate environment in case of an oil spill;
- The need to develop policies and procedures to manage impacts that an oil spill would create upon Halalt cultural and economic life;
- The need to train Halalt community members to be fully marine response ready to help with clean-up if a spill occurs; and
- The need to establish financial support for Halalt employment opportunities related to the oil industry.

With respect to Project mitigation measures, Halalt also requested the development of a full collaborative working relationship between the proponent and the Halalt community.

Sections 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 Halalt that the Crown has not responded to directly via letter will be otherwise actively considered by decision-makers weighing Project costs and benefits with the impacts on Aboriginal Interests.

#### ***Halalt's Response to NEB Recommendation Report***

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

#### **V - Potential Impacts of the Project on Halalt'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 Section 4.3 of this report, respectively. The Crown recognizes that areas within the asserted 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 Halalt's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Halalt'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 Halalt's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Halalt, Halalt'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.

Halalt completed a third-party Traditional Marine and Resource Use (TMRU) study in 2013. The focus of the study was on Crown lands and waters within the asserted territory of Halalt crossed by the Marine Regional Study Area (RSA). In its Supplemental Technical Report ([A3Z4Z1](#)), the proponent estimated approximate distances and directions from the marine shipping lanes based on information in Halalt's report. Additional TMRU information for Halalt was presented in *Volume 8B* ([A3S4K3](#)) of the Project application. Traditional uses identified by Halalt include hunting aquatic mammals and birds, gathering plants, information on fishing sites, habitation sites, gathering areas for community members, and trails and travelways.

### ***Impacts on Hunting, Trapping, and Plant Gathering***

As summarized in the TMRU study, seals, porpoises, sea lions, ducks were historically hunted by Halalt. Community members would often use spears, nets and more recently shotguns to hunt waterfowl. Historically, Halalt gathered plants for food, medicines and multi-purpose materials for a variety of uses. Plants gathered include indigenous onions, chocolate lily or rice root, tiger lily, carrots, bracken fern, sea asparagus, wapato, bog blueberry, cranberry, round rushes, scouring rush, cattails, stinging nettles, cedar bark, salmon berries and black caps (blackcap berries). Community members noted that wapato and Indian hemp were used to trade with other First Nations. Plant gathering remains an important part of life for Halalt community members.

During the TMRU study, nine hunting sites, six of which are located within the Marine RSA, were identified by Halalt: Porlier Pass/Cowichan Gap, Galiano Island, Tent Island, Kuper Island, Shoal Islands, and Willy Island. In *Volume 8B*, a marine mammal and bird hunting site at Thetis Island was also identified in the Marine RSA. The shipping lanes are not crossed to access these hunting sites. During the TMRU study, Halalt identified seven plant gathering sites, of which four are within the Marine RSA: Canoe Pass, the confluence of Pitt and Fraser Rivers, Valdes Island and Kuper Island. Shipping lanes are crossed to access two of these sites: Canoe Pass and the confluence of Pitt and Fraser Rivers.

In addition to providing traditional use information, Halalt raised the following specific issues and concerns with potential Project impacts relating to their hunting and gathering activities:

- Effects of an oil spill on waterfowl and plants;
- Remediation of waterfowl populations;
- Restoration of riparian plants;
- Impact on waterfowl hunting areas and plant harvesting sites; and
- Impacts on food harvest for individual households.

The general direct and indirect effects of the Project on hunting, trapping, and gathering, along with key mitigation measures, are described in Sections 4.3.1 and 4.3.3 of the main body of this report.

As described in the *NEB Recommendation Report*, Project-related activities are likely to result in low to moderate magnitude effects on soil and soil productivity, rare plants and lichens and vegetation communities of concern, old growth forests, wetlands, and terrestrial wildlife and wildlife habitat (including species at risk), marine mammals, and marine birds.

Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Halalt's hunting, trapping, and plant gathering activities. The Crown appreciates that this short-term disruption could temporarily alter the behaviour of community members' hunting, trapping or plant gathering activities during construction, and that reduced participation in traditional activities, while not expected to occur from temporary access disruptions within the footprint of the Project, could have spiritual and cultural impacts on community members.

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 is committed to minimizing the Project footprint to the maximum extent feasible, and all sensitive resources identified on the Environmental Alignments Sheets and environmental tables within the immediate vicinity of the RoW will be clearly marked before the start of clearing. Mitigation measures to reduce effects on habitat, limit barriers to movement, avoid attraction to wildlife to the work site, minimize sensory disturbance and protect site specific habitat features are outlined in the Project Environmental Protection Plan (EPP) and the vegetation and wildlife management plans. The proponent would implement a range of mitigation measures that would reduce potential effects associated with Halalt'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.

The proponent is committed to implementing weed management (as outlined in the Weed and Vegetation Management Plan) to reduce the potential for weed infestation following construction, and utilizing an Integrated Vegetation Management approach intended to reduce the use of herbicides and promote healthy ecosystems. The proponent will consult with Aboriginal groups regarding problem

vegetation management and methods of treatment. Measures outlined in the proponent's Reclamation Management Plan are intended to stabilize and revegetate affected lands to achieve land productivity along the construction RoW and footprint, equivalent to the adjacent land use. The proponent has also committed to ongoing engagement with Aboriginal groups in providing traditional knowledge related to the location and construction of the Project

NEB Condition 81 would require the proponent to develop a WMT-specific EPP, including mitigation and monitoring plans, to be finalized in consultation with Fisheries and Oceans Canada and potentially affected Aboriginal groups. The proponent would also be required to conduct a post-construction monitoring program for marine mammals from the expansion of the WMT. The proponent has committed to various mitigation measures to reduce effects of construction and operation of the WMT on marine birds, further the proponent has committed to compile information regarding mortality and collision events and to include that information in post-construction monitoring reports.

In consideration of the information available to the Crown from the NEB process, consultation with Halalt, Halalt'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 construction and routine maintenance during operation and Project-related marine shipping are expected to result in negligible impacts on Halalt's hunting and trapping activities and a minor impact on Halalt's plant gathering activities.

#### ***Impacts on Freshwater Fishing, and Marine Fishing and Harvesting***

As described in the TMRU study, shellfish (crabs and mollusks) and fish were historically the main food staples for Halalt. Shellfish and intertidal gathering of species included clams, cockles, chitons, oysters, mussels, crabs, and sea urchin. Community members used various methods, including spearing, trolling, and fish traps and weirs to catch herring, sea bass, lingcod, rock cod, greenling cod, red snapper, halibut, flounder, octopus, salmon, as well as night fishing with fire and harpoons to catch trout. Historically, Halalt community members would fish with community members from the Cowichan Tribes, Lyackson First Nation, Penelakut First Nation, and Chemainus First Nation.

Halalt identified 35 fishing sites during the TMRU study, of which 26 fishing sites were identified within the Marine RSA. Two fishing sites, a marine harvest site and a hunting site were identified in the Strait of Georgia. Shipping lanes are crossed to access the six fishing sites identified: Strait of Georgia, Tsawwassen, Fraser River, Active Pass, Canoe Pass, and Point Roberts. The TMRU study reports that historically, Halalt community members would travel from their village site on Lulu Island, to as far up the Fraser River as the District of Hope with community members from the Cowichan Tribes and Lyackson First Nation, Penelakut First Nation and Chemainus First Nation. Halalt built canneries on the river where community members would troll commercially and fish with nets from small fishing boats. The TMRU study did not identify any traditional use sites by Halalt in Burrard Inlet in the vicinity of the WMT.

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

- Effects of an oil spill on fish and shellfish;
- Remediation and restoration of fish stocks, herring spawn sites, shellfish and intertidal gathering areas;
- Restoration of marine plants;
- Impact on fishing, fish spawn collection areas, and shellfish and intertidal gathering areas;
- Impacts on food harvest for individual households; and
- The need to develop full contingency plans and mitigation measures for the Fraser River that fully restores this region and Halalt's resource sites.

As described in the *NEB Recommendation Report*, Project-related construction and operation could result in low to moderate magnitude effects on fish and fish habitat and surface water. Moderate effects to fish and fish habitat would be localized to individual watercourse crossings where any potential serious harm would be compensated by offset measures. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects on fishing activities (Section 4.3.2 of this Report). A number of recommended NEB conditions require the proponent to file reports that will monitor Project-related impacts to fish, fish habitat and riparian habitats. With regards to specific concerns raised by Halalt, the proponent would implement several mitigation measures to reduce potential effects to species important for Halalt's fishing activities. The proponent has committed to time watercourse crossing construction activities to occur within the least risk biological windows in an attempt to avoid causing serious harm to fish, has committed to working with Aboriginal groups to identify the most appropriate means of offsetting serious harm to marine fish and fish habitat, and has proposed the implementation of channel and bank reclamation measures at each watercourse crossing to help maintain the productive capacity of water bodies that provide fish habitat.

The general 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. 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 reduce potential effects associated with Halalt's marine fishing and harvesting activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups. 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 Halalt 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. Reduced harvests, while not expected to occur from temporary access restrictions, could impact Halalt's cultural activities and sharing of marine food with the community.

In consideration of the information available to the Crown from the NEB process, consultation with Halalt, Halalt'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 construction and routine maintenance during operation including Project-related marine shipping, are expected to result in minor impacts on Halalt's marine fishing and harvesting activities.

### ***Impacts on Other Traditional and Cultural Practices***

As identified in the TMRU study, Halalt's gathering places include camp sites, historic summer camping sites, and historic villages (including winter and fishing). Gathering places were used for fishing, collecting shellfish on the beach, gathering medicinal plants and plants for sustenance, hunting waterfowl, and training for canoe races. Historically, some community members would stay in these seasonal villages year-round. In *Volume 8B*, settlement areas were also identified in the Fraser River and at Valdes Island during the desktop study and literature review conducted for the Project.

During the TMRU study 14 gathering places were identified, of which 11 are located within the Marine RSA. Shipping lanes must be crossed to access one gathering place (habitation site) at Lulu Island. The historic settlements identified are located within the Marine RSA; however shipping lanes are not crossed to access the sites. One set of historic trails were identified by Halalt in the Marine RSA during the TMRU study. The shipping lanes are crossed to access the historic trails at Lulu Island. No sacred areas were identified during the TMRU study for the Project.

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

- Impact on habitation and processing sites, recreation sites, and boundary marker sites; and
- The need to develop policies and procedures to manage impacts that an oil spill would create upon Halalt's cultural life.

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 Halalt during the NEB and Crown consultation processes.

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 Halalt's traditional and cultural practices, and there could be reduced access to traditional and cultural sites during Project operational activities, including project-related marine shipping. It is noted that the proponent has committed to

ongoing engagement with Aboriginal groups 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 Halalt, Halalt'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 construction and routine maintenance during operation and Project-related marine shipping are expected to result in negligible-to-minor impacts on Halalt's other traditional and cultural practices.

### ***Impacts on Aboriginal Title***

Halalt raised the following specific concerns with potential Project impacts relating to their Aboriginal title claim:

- The need to establish financial support for Halalt employment opportunities related to the oil industry; and
- The need to develop policies and procedures to manage impacts that an oil spill would create upon Halalt's economic life.

The Crown provides a description of the potential impacts of the Project on Aboriginal title in Section 4.3.5 of this Report, which includes a discussion of the numerous mitigation measures that avoid or minimize potential impacts associated with Project-related activities on asserted Aboriginal title claims. Some of these mitigations include NEB Conditions that would either directly or indirectly avoid/reduce Project impacts associated with the degree of disturbance to terrestrial, marine and aquatic environments, ongoing engagement with Aboriginal groups that has the potential to reduce impacts on the ability of Aboriginal groups to manage and make decisions over the area impacted by the Project, as well as NEB Conditions that could provide Aboriginal groups with direct and/or indirect economic benefits if the Project is approved. The Crown notes that Halalt executed a MBA with the proponent. Although these agreements are confidential, the Crown understands they may contain provisions for financial, environmental and training benefits that could further reduce impacts to Aboriginal title claims if the Project proceeds.

Given the potential impacts of the Project on Aboriginal title and various measures to address those impacts, as described in Section 4.3.5, it is the Crown's opinion that the Project is expected to have negligible impacts on Halalt's asserted Aboriginal title to the proposed Project area.

### ***Impacts Associated with Accidental Pipeline, Terminal, and Tanker Spills***

Halalt expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including:

- The need to train Halalt community members to be marine response ready to help with clean-up if a spill occurs, and

- The need to develop policies and procedures to manage impacts that an oil spill would create upon Halalt's economic life.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a 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. A discussion of the potential impacts of an accidental spill on Aboriginal Interests is provided in Section 4.3.6 of this Report. In consideration of this information and analysis, as well as information available to the Crown on Halalt's Aboriginal Interests and concerns raised by Halalt during the Crown consultation process, a spill associated with the Project could result in minor to serious impacts on Halalt'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<sup>3</sup>.

## **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 pipeline and marine safety regimes would only partially address these ongoing burdens and risks. Under the typical conditions for construction and operations of the pipeline and WMT, as well as for project-related marine vessel use of the area between the WMT and the 12 nautical mile limit (J-buoy) through the Salish Sea and Strait of Juan de Fuca, the Crown expects impacts of the Project on the exercise of Halalt First Nation's Aboriginal Interests would be up to minor.

The Crown is supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Halalt First Nation's ongoing involvement and participation in the proponent's detailed Project planning, including the development of site-specific measures or pipeline routing to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Halalt in emergency response planning activities. Given existing use of the marine shipping corridor within areas proximate to the exercise of Halalt's Aboriginal Interests and the potential severity of the impacts of a marine spill on the exercise of Halalt'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 Halalt. 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 MBA with Halalt in an attempt to offset potential impacts, should the Project proceed.

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<sup>3</sup> Trans Mountain Final Argument, p. 85 and 207