

Appendix B.4 – Boston Bar First Nation

I - Background Information

Boston Bar First Nation (Boston Bar) is part of the Nlaka'pamux (pronounced “Ing-khla-kap-muh”) people, whose asserted traditional territory encompasses part of south central British Columbia (BC) from the northern United States to north of Kamloops. Boston Bar holds 12 reserves situated in the watersheds of the Fraser River and adjacent small rivers, with a total registered population of 273 members as of July 2016.

Boston Bar appears to have been part of the Lower Nlaka'pamux or Thompson people. Boston Bar members historically spoke Nlaka'pamux, the language of the Nlaka'pamux language, which falls into the Interior Salish language group. The [Report on the Status of B.C. First Nations Languages \[2014\]](#) states that amongst Nlaka'pamux people, 2.1% are fluent speakers, 5.5% have some level of skill with language, and 6% are learners.

Boston Bar belongs to the Nlaka'pamux Nation Tribal Council (NNTC). Other NNTC member bands include Oregon Jack Creek Band, Boothroyd Indian Band, Lytton First Nation, Spuzzum First Nation, Skuppah Indian Band. Boston Bar is a party to the Nlaka'pamux Nation's *Writ of Summons*, which was filed in the BC Supreme Court on December 10, 2003, asserting Aboriginal title to a territory identified in the Writ. The Writ also includes Lower Nicola Indian Band, Ashcroft Indian Band, Boothroyd Indian Band, Coldwater Indian Band, Cook's Ferry Indian Band, Kanaka Bar Indian Band, Lytton First Nation, Nicomen Indian Band, Nooaitch Indian Band, Oregon Jack Creek Band, Shackan First Nation, Siska Indian Band, Skuppah Indian Band, and Spuzzum First Nation.

II - Preliminary Strength of Claim Assessment

- Boston Bar is a member band of the Nlaka'pamux Nation. Approximately 226 kilometres (km) of the proposed pipeline right-of-way (RoW) and four pipeline facilities (i.e. Kamloops Terminal, Stump Station, Kingsvale Station and Hope Station) would be located within Nlaka'pamux's asserted traditional territory. The Project RoW travels approximately 185 km through Boston Bar's asserted traditional territory. The distance from the RoW to the nearest Boston Bar community is approximately 29 km.
- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal rights, over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The areas assessed to have strong *prima facie* claims are in the vicinity of the Nicola Valley south towards the Coquihalla Lakes, which most available ethnographers indicate to be within the Nlaka'pamux territory, and there are some indications of Nlaka'pamux hunting, fishing, gathering uses in the Nicola valley area around the time of contact, with connecting trails. The claims diminish in the area north of Stump Lake, as it is unclear whether this falls within Nlaka'pamux territory, and there is indication of an ancestral connection between the Nlaka'pamux community who moved into the north end of Nicola Lake, intermarrying with the Stewix/Okanagan, which could support a moderate *prima facie* claim.

The *prima facie* claim diminishes to weak in the vicinity of Hope as it is understood that area is outside the area ethnographers attribute to historic Nlaka'pamux use¹.

- The Crown's preliminary assessment of the Nlaka'pamux Nation's claim for Aboriginal title over the section of the Project that spans Kamloops to southwest of Hope, involves a range of a weak to strong *prima facie* claims. The area assessed to have a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory, and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. The areas with weaker claims include those outside the area ethnographers attribute to the Nlaka'pamux (e.g. north of Stump Lake to Kamloops, and in the vicinity of Hope) and there is no/limited indication of historic Nlaka'pamux use at 1846².

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

Boston Bar did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB. Boston Bar was kept informed of the Crown's consultation activities during the course of the NEB review through various correspondences from the Major Projects Management Office (MPMO). Boston Bar's engagement in consultation activities with the Crown began with correspondence in the post-NEB hearing phase and interest in meeting to discuss the Project as well as potential impacts on Boston Bar's Aboriginal Interests.

The MPMO offered Boston Bar \$6,000 in participant funding for consultations following the close of the NEB hearing record. MPMO offered Boston Bar an additional \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report*. Boston Bar did not use these funding opportunities. On October 20, 2016 EAO also provided Boston Bar \$5,000 towards their participation in the provincial process.

¹ Ministry of Justice, Aboriginal Research Division, Nlakapamux: Review of Ethnographic and Historical Sources (Revised November 20, 2013; Teit, James, "The Thompson Indians of British Columbia" in *Memoirs of the American Museum of Natural History*, Volume II, 1900.; Dawson, George M., "Notes on the Shuswap People of British Columbia" in *Transactions of the Royal Society of Canada*, Section II, 1891; Wyatt, David, "Thompson" in *Handbook of North American Indians*, Vol. 12, Washington: Smithsonian Institution, 1998.

² Ibid.

The Crown provided a first draft of this Report to Boston Bar for review and comment on August 17, 2016. The Crown did not receive comments from Boston Bar on the draft Report. The Crown met with Boston Bar on October 25, 2016 to discuss the Project. 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 Boston Bar.

IV - Summary of Key Boston Bar Issues and Concerns Raised

Boston Bar raised concerns with the Project during its October 25, 2016 meeting with the Crown. Boston Bar also indicated that they support comments put forward by NNTC and share the concerns voiced by NNTC related to the potential impacts of the proposed Project. This section offers a summary of the key issues raised by Boston Bar, 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 Boston Bar's key Project-related issues and concerns are summarized below:

Methodology/Process/ Consultation

- Concerns with the NEB process and the consultation approach used to date, which has relied on letters and on a formal, court-like hearing process;
- Concern that, in order to understand NNTC's views, a relationship between the NNTC and the Crown first needs to be established;
- Concern with the reliance by the Crown on the NEB's conditions and lack of compliance with conditions placed on proponents;
- Concern that the NEB process is sub-optimal for the kind of engagement that NNTC wants with the Crown;
- One key principle for NNTC in its relationships with proponents is that NNTC does not provide *certainty* to proponents – they only provide *predictability*; and
- Concern for the need to establish an engagement model agreement between the NNTC and the Crown as a first step into the discussions.

Environmental Effects

- Significant concerns about potential impacts of the Project and increased risk to the environment and to NNTC members' livelihoods;
- Concerns around the environment, including protection of traditional medicines and wildlife migration and mating, and about potential impacts on the Fraser River fish that swim upriver. If the fish or the rivers were to be harmed, they would affect all NNTC people;
- Impacts of the Project on the integrity of the aquatic system and impacts on spawning grounds;
- A lack of trust in studies that predict no effect to fish, as fish are always impacted one way or another, and NNTC members have nowhere else to go;
- Protection of water for future generations including springs, creeks, falls, lakes and all mountain water; and

- Concerns that the use of herbicides may impact food sources and Boston Bar's health.

Social and Cultural Effects

- Concerns about impacts due to the presence of Project-related workforce, including pollution, increased pressure on wildlife and vegetation, health resources (e.g., hospitals), and safety for women;
- Concerns about impacts on Cultural Survival Areas, which are linked to Boston Bar's health, safety and overall well-being; and
- Concerns about Project impacts spiritual areas, and cultural sites and trails that provide training places for their children and help Boston Bar to hold onto their culture.

Cumulative Effects and Impacts on Aboriginal Rights

- Concerns around the issue of cumulative impacts as there are two railways and two main highways which travel through the territory, which provide benefits to the country at significant costs to NNTC members' title and rights;
- Concern that NNTC members are still dealing with the impacts along the transportation corridor of the railways, and want to avoid any future legacy impacts from other projects such as this one;
- Concerns about more outsiders coming in to the territory (including Project-related workers) if the pipeline were to be approved, as this would provide more access to hunters due to increased infrastructure, and would increase pressures on hunting and fishing resources; and
- Disruption of access to cultural sites and to traditional foods resulting from the Project would have negative impacts on their efforts to improve community health standards.

Accidents and Malfunctions

- Concerns of the potential impacts of a spill and clarity from the proponent on spill response procedures.

Other Concerns

- Concerns with the on-going issues related to the original pipeline and an interest in resolving issues of the original pipeline for those communities where the pipeline runs through their reserves, like Coldwater; and
- Concerns regarding routing near the Coldwater reserve and the potential disturbance and impacts associated with pipeline expansion.

Boston Bar's Response to NEB Recommendation Report

Boston Bar did not provide any specific comments on the NEB Recommendation Report.

V - Potential Impacts of the Project on Boston Bar'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 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 Boston Bar's Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Boston Bar'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 Boston Bar's Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Boston Bar, Boston Bar'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.

Esh-kn-am Cultural Resource Management Services conducted a joint, third-party traditional land and resource use study, the *Traditional Knowledge Project for the Kinder Morgan Trans Mountain Pipeline Expansion Project* (the *Traditional Knowledge Project*) for Coldwater Indian Band, Cook's Ferry Indian Band, Siska Indian Band, and Boston Bar First Nation (participating bands). The *Traditional Knowledge Project* was filed confidentially with the NEB. In November 2016, the *Traditional Knowledge Project* report was provided to the Crown on the condition that it be used for the Project, and not be used for any other purpose, and that it is a small sampling of Aboriginal rights practitioners due to time and budget constraints and is not a definitive study on the use of Aboriginal title lands or the practice of Aboriginal rights by the participating bands. The report includes site-specific information and estimates of the number of hectares that may be directly or indirectly impacted by the Project. The Crown has relied on this information to assess potential impacts of the Project on Boston Bar's Aboriginal Interests.

Impacts on Hunting, Trapping and Plant Gathering

As summarized in the *Traditional Knowledge Project* report, many families within the community still rely on the meats obtained through hunting activities for both economic and cultural reasons. Participating bands identified approximately 43 hunted and trapped species, and commonly hunted species include mule deer, white-tailed deer, moose, willow grouse, spruce grouse and blue grouse, and to a lesser degree, ptarmigan, ducks, and smaller mammals. Many community members use the hides, antlers, hooves and other parts for clothing, arts and crafts or decoration. Many community members hunt from the late summer into the winter, while others hunt year round, as needed. Gathering berries, roots, plants and trees are an important activity of Boston Bar, with gathering primarily taking place in the spring, summer and fall seasons, with limited gathering of shrubs and tree components in the winter

months. Plant gathering continues to have importance as part of the seasonal migration of the people. Plants are gathered for food and medicine, and community members have extensive knowledge of the culturally and historically significant plants on the traditional territory, and both the plants used by people and the plants that are central to maintaining healthy wildlife, bird and fish populations. Hunting and trapping, as well as travelling and camping on the land during hunting and trapping trips, link participatory bands to their ancestors and the practices enable community members to express important aspects of their cultural identities.

Boston Bar identified several concerns related to environmental effects of the Project on hunting, trapping, and plant gathering activities, in particular traditional medicines and wildlife migration, use of herbicides and cumulative effects in their traditional territory. 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 wildlife and wildlife habitat (including species at risk) listed species. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental effects associated with hunting, trapping, and gathering (Section 4.3.1 of this Report). With regards to specific concerns raised by Boston Bar, the proponent would implement several mitigation measures to reduce potential effects to species important for Boston Bar's hunting, trapping, and plant gathering activities. 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 would 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 Wildlife Management Plans.

As summarized in the *Traditional Knowledge Project* report, the total hectares of the hunting and trapping areas in the Project area is more than 2,060 ha (over 59% of the Project area within Nlaka'pamux territory), and the total hectares of plant gathering and medicinal sites is more than 1,962 ha (over 56% of the Project area within Nlaka'pamux territory). Hunting and trapping areas have a high overall value to participating bands. Of the hunting and trapping areas identified within the Project area, ungulate cultural use areas and fur-bearer cultural use areas were noted as having high cultural, social, economic and subsistence values. Participating bands identified more than 70 important plants gathered, and engage in far-reaching plant gathering activities across the traditional territory. The plant gathering sites have different meanings and uses associated with them, including gathering plants for food and medicine, or sites associated with plants used for construction of drying racks for smoking meat. Of the plant sites identified within the Project area, participating bands indicated they have high cultural, social, economic, and subsistence value.

Boston Bar raised concerns with the Project's potential impacts relating to specific locations and access to hunting, trapping, and plant gathering activities, including increased access for non-Aboriginals and disruption of access to traditional foods. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Boston Bar's access to hunting, trapping and

plant gathering activities, largely confined to the Project footprint for the pipeline and associated facilities. The Crown appreciates that with construction and reclamation activities, disruptions to access may result in a loss of harvesting opportunities for Boston Bar. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific locations and access associated with hunting, trapping, and gathering sites (Section 4.3.1 of this Report). With regards to specific concerns raised by Boston Bar, the proponent would implement several mitigation measures to reduce potential effects on traditional land and resource use (TLRU) sites important for Boston Bar's hunting, trapping, and plant gathering activities, such as management plans that include access management, scheduling and notification of Project activities, and environmental monitoring programs that monitor access control measures. The Access Management Plan is intended to reduce disturbances caused by access, construction equipment and vehicle traffic, during and following construction in order to minimize disturbance to access to Boston Bar's traditional lands. The proponent has committed to minimizing the development of access routes, controlling public access along the construction RoW, selecting appropriate access routes that cause the least disturbance to high quality, sensitive wildlife habitat, managing traffic on these routes and determining appropriate construction reclamation. The proponent has also committed to work with applicable resource managers, traditional land and resource users to define locations where access control is necessary, and what type(s) of access control would be implemented. In the event that hunting, trapping, and plant gathering sites are identified during ongoing engagement with Boston Bar prior to construction, the sites would be assessed, and appropriate mitigation measures would be determined. The proponent committed to working with Boston Bar to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Boston Bar expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its hunting, trapping, and plant gathering activities, including impacts on community health standards, and Boston Bar's overall well-being. Project-related construction and routine maintenance is expected to cause short-term, temporary disruptions to Boston Bar'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 Project footprint, could have spiritual and cultural impacts on community members. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential social, cultural, spiritual, and experiential effects associated with hunting, trapping, and plant gathering activities (Section 4.3.1 of this Report).

In consideration of the information available to the Crown from consultation with Boston Bar and other Nlaka'pamux groups, 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 are expected to result in a minor-to-moderate impact on Boston Bar's hunting, trapping and plant gathering activities. In reaching this conclusion, the Crown has considered the following factors that have been discussed above:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Boston Bar;
- Project-related pipeline and facility construction and routine maintenance activities within Nlaka'pamux's asserted traditional territory are temporary and thus, likely to cause minor disruptions to Boston Bar's community members accessing traditional hunting, trapping and plant gathering sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and
- Concerns identified by Boston Bar regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their hunting, trapping and plant gathering activities.

Impacts on Freshwater Fishing

Fishing activities currently (and historically) occur at various locations in the watershed, including Nicola Lake, Coldwater and Nicola rivers, along with the many smaller rivers and streams within the territory. Fishing occurs in the streams, creeks and rivers from the spring through the fall, and typically year round in the lakes. Historically, fish provided an important supplement to ungulate meat and other game during the seasonal migration of the people. Local species fished include trout (e.g., rainbow, Dolly Varden, brooks, bull, and brown trout), whitefish, steelhead, suckers, and salmon (e.g., chinook, sockeye salmon, coho and chum). Participant bands noted that fish stocks are in decline from when they were young, and recognize the importance and need for habitat improvements and conservation. Fishing has high cultural, social, economic and subsistence values. Boston Bar noted that important social, political and spiritual events take place during the spring and summer fishing gatherings, as they did historically.

Boston Bar identified many concerns related to environmental effects of the Project on fishing activities, including the integrity of the aquatic system and impacts on spawning grounds. As described in the *NEB Recommendation Report*, Project-related construction and operation could result in minor 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 Boston Bar, the proponent would implement several mitigation measures to reduce potential effects to species important for Boston Bar'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.

As summarized in the *Traditional Knowledge Project* report, participating bands indicated that 1,427 ha of land associated with existing fishing activities would be impacted by the Project. Participating bands

noted occurrences and impacts on 20 fish species in the Project area, in the waters of the Coldwater, Nicola and tributary rivers and streams.

Boston Bar raised concerns with the Project's potential impacts relating to specific locations and access to fishing activities, including increased access by non-Aboriginals and disruption to access to traditional foods. Project-related construction and routine maintenance activities are expected to cause short-term, temporary disruptions to Boston Bar's access to fishing activities. The Crown appreciates that if construction and reclamation occur during the fishing season, there could be a potential reduction in access to waterways, staging areas, and fishing sites for Boston Bar community members. However, disruptions to access would largely be confined to the Project footprint for the pipeline and associated facilities during construction and reclamation. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential social, cultural, spiritual or experiential effects associated with fishing activities or would directly or indirectly avoid or reduce impacts to access to fishing sites important for Boston Bar (Section 4.3.2 of this Report). With regards to specific concerns raised by Boston Bar, the proponent would implement several mitigation measures to reduce potential effects to fishing sites important for Boston Bar's fishing activities. As previously discussed, the proponent is committed to minimize disturbance to access to Boston Bar's traditional lands, as described in the Access Management Plan. The proponent committed to working with Boston Bar to develop strategies to most effectively communicate the construction schedule and work areas to community members.

Boston Bar expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its fishing activities, including impacts on community health standards, and Boston Bar's overall well-being. As described previously, the Project construction and routine maintenance is expected to cause short-term, temporary disruptions to Boston Bar's fishing activities. The Crown appreciates that this temporary interruption could mean that community members alter their fishing activities during construction, which could affect their participation in the traditional activity. NEB conditions, if the Project is approved, would either directly or indirectly reduce the social, cultural, spiritual or experiential effects associated with fishing activities (Section 4.3.2 of this Report).

In consideration of the information available to the Crown from consultation with Boston Bar, 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 are expected to result in a minor impact on Boston Bar's freshwater fishing activities. In reaching this conclusion, the Crown has considered the following factors that have been discussed above:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on species harvested by Boston Bar;
- Project-related pipeline and facility construction and routine maintenance within Nlaka'pamux's asserted traditional territory are temporary and thus, likely to cause minor disruptions to Boston Bar's community members accessing traditional fishing sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and

- Concerns identified by Boston Bar regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their freshwater fishing activities.

Impacts on Other Traditional and Cultural Practices

According to Boston Bar, the existing and proposed pipeline corridor would have substantial and permanent impacts on Cultural Survival Areas. Cultural Survival Areas are defined as “an area, place of body of water that was and continues to be of such importance, significance and sensitivity to the culture and sustenance of the Nlaka’pamux, that to modify, change or develop will/may render the area, place or body of water culturally unsustainable.”³

As summarized in the *Traditional Knowledge Project* report, 11 different Cultural Survival Area site types were identified by participating bands within the Project footprint: Fix Oneself, Ghosted, Gravesite, Legend/Myth/Origin Story, Little People, Pit House, Puberty Site, Sasquatch, Sweathouse, Training Site, and Xa?xa?. Each Cultural Survival Area site has unique, culturally significant and important aspects. During the TLU, 14 tutelary species and cultural occurrences (e.g., trails, gathering places, camp sites, drying rack sites, trading places, and cultural activities such as swimming in rivers and hiking) were identified by participating bands in the Project area. A tutelary species is defined as a guardian, patron or protector of a particular place, geographic feature, person, lineage, nation, culture or occupation (e.g., bald eagle, golden eagle, great horned owl, hawk, rubber boa). Trails, place names and camps provide important ways for the participating bands to access and live on the lands and gather resources or engage in cultural and spiritual practices. The tutelary species and cultural occurrences identified within the Project area are considered to have high cultural, social, economic and subsistence value.

Boston Bar identified concerns related to environmental effects of the Project on other traditional and cultural practices, particularly Cultural Survival Areas. As described in Section 4.3.4 of the Report, Project-related activities are not likely to result in significant adverse effects on the ability of Aboriginal groups to use land, waters or resources for traditional purposes. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential environmental impacts on physical and cultural heritage resources (Section 4.3.4 of this Report). With regards to specific concerns raised by Boston Bar, the proponent would implement several mitigation measures to reduce potential effects on physical and cultural heritage resources important for Boston Bar’s traditional and cultural practices. The proponent has also committed to reduce potential disturbance to community assets and events by implementing several measures that include avoiding important community features and assets during RoW finalization, narrowing the RoW in select areas, scheduling construction to avoid important community events where possible, communication of construction schedules and plans with community officials, and other ongoing consultation and engagement with local and Aboriginal governments.

³ *Nlaka’pamux Cultural Survival Area Policy; 2012; Esh-kn-am CRMS and NWRM Ltd. and Raymond Phillips*

As summarized in the *Traditional Knowledge Project* report, the existing and proposed pipeline corridor would have substantial and permanent impacts on 11 identified Cultural Survival Areas encompassing over 1,725 ha (59% of the proposed Project area within Nlaka'pamux territory), and would create significant changes and impacts which exceed 1,427 ha of spiritual and cultural places and existing fishing sites, including 40% of Tutelary (spiritual protection). Participating bands noted that the Project would impact 894.8 ha of Cultural Survival Areas sites and approximately 25% of the Cultural Survival Areas that occur within the Project area.

Boston Bar raised concerns with the Project's potential impacts relating to specific locations and access to other cultural and traditional practices, including disruption of access. The Crown appreciates that Boston Bar's opportunities for certain traditional and cultural activities will be temporarily interrupted during construction and routine operation, and there could be reduced access to travelways, habitation sites, gathering sites, and sacred areas. However, temporary disruptions to Boston Bar's traditional and cultural practices would be largely confined to sites within the Project footprint for the pipeline and associated facilities. NEB conditions, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts on specific sites and access to physical and cultural heritage resources (Section 4.3.4 of this Report). The Crown notes the proponent's commitment to ongoing engagement with Aboriginal groups that are interested in providing traditional knowledge related to the location and construction of the Project.

Boston Bar expressed concern with direct and indirect effects of the Project on social, cultural, spiritual, and experiential aspects of its other traditional and cultural practices, including Boston Bar's health and overall wellbeing. As described previously, the Crown appreciates that Project-related activities may result in temporary interruptions to Boston Bar's cultural and spiritual practices, or that their participation in the traditional activity is curtailed, during Project construction and routine maintenance activities.

In consideration of the information available to the Crown from the NEB process, consultation with Boston Bar, Boston Bar'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 are expected to result in a minor-to-moderate impact on Boston Bar's other traditional and cultural practices. In reaching this conclusion, the Crown has considered several factors that have been discussed above, which are summarized as follows:

- Project-related construction and routine maintenance activities are likely to have minor to moderate environmental effects on Boston Bar's traditional and cultural practices;
- Project-related construction and routine maintenance activities within Nlaka'pamux's asserted traditional territory are temporary and thus, likely to cause minor disruptions to Boston Bar's community members accessing traditional and cultural practice sites within the Project footprint, and negligible disruptions for sites that are not within the Project footprint; and

- Concerns identified by Boston Bar regarding Project-related effects on social, cultural, spiritual, and experiential aspects of their other cultural and traditional practices.

Impacts on Aboriginal Title

The Crown notes that the Project would be located within an area of Boston Bar traditional territory assessed as having a strong *prima facie* claim is in the vicinity of Merritt, which is within the area considered by ethnographers to be within Nlaka'pamux territory, and there are indications for several historic villages in proximity in the Nicola Valley that were likely occupied by the Nlaka'pamux at 1846. Boston Bar described Aboriginal uses as throughout the Nlaka'pamux territory. Occupancy areas have not been identified, but cultural survival sites have been noted as within the proposed pipeline corridor.

The Crown has actively consulted with Boston Bar throughout the NEB process and Crown consultation process at a deeper level in an attempt to better identify, understand, and resolve concerns relating to Aboriginal title. Concerns related to Aboriginal title raised by Boston Bar throughout the NEB and Crown consultation process include:

- Impacts that could impede or disrupt Boston Bar's use of its asserted traditional territory, including access restrictions to resources and disruption of traditional activities resulting from cumulative effects to critical resources including water;
- Activities that affect Boston Bar's ability to manage and make decisions over the Project area, including reduced ability to pursue preservation objectives such as the protection of cultural survival areas; and,
- Project-related activities that could affect Boston Bar's economic development aspirations for its asserted traditional territory, including risk to community members' livelihoods.

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 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. It is noted that Boston Bar has not executed a Mutual Benefits Agreement with the proponent.

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 minor impacts on Boston Bar's asserted Aboriginal title to the Project area.

Impacts Associated with Accidental Pipeline Spills

Boston Bar expressed several concerns with direct and indirect effects of Project-related pipeline spills on their Aboriginal Interests, including the proponents' spill response procedures.

The Crown also appreciates Boston Bar's concerns regarding spills, the potential for a spill to impact Boston Bar's use and occupation of its asserted traditional territory, ability to make decisions over the area impacted, and the potential for a spill to adversely impact any economic development aspirations Boston Bar has for its territory.

A discussion of the potential impacts of a pipeline 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 Boston Bar's Aboriginal Interests and concerns raised by Boston Bar during the NEB process and Crown consultation process, a pipeline spill associated with the Project could result in minor to serious impacts on Boston Bar's Aboriginal Interests. 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. In making this general conclusion, the Crown acknowledges that Aboriginal peoples who live nearby and rely on subsistence foods and natural resources are at greatest risk for adverse effects from an oil spill⁴.

VI - Conclusions

The Crown understands that 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 safety regime would only partially address ongoing burdens and risks associated with the Project. Under the typical conditions for construction and operations, the Crown expects impacts of the Project on the exercise of Boston Bar's Aboriginal Interests would be up to minor-to-moderate.

The Crown is also supportive of consultation requirements provided by the NEB and EAO in the various conditions, which would support Boston Bar's ongoing involvement and participation the proponent's detailed project planning, including the development of site-specific measures to further avoid or mitigate adverse impacts on Aboriginal Interests, as well as the involvement of Boston Bar in emergency response planning activities. The federal Crown is also considering incremental measures that would further accommodate the potential adverse impacts of the Project on Boston Bar, as discussed in Sections 4 and 5 of this Report.

⁴ Trans Mountain Final Argument, p. 85 and 207