

Appendix D.15 – Snaw-naw-as (Nanoose) First Nation

I - Background Information

Snaw-naw-as First Nation (Snaw-naw-as), also known as Nanoose First Nation, is located in the Nanoose District on the south shore of Nanoose Harbour, on the east coast of Vancouver Island next to Nanoose Bay in British Columbia (BC). Snaw-naw-as' sole reserve covers 62.8 hectares (ha) and Snaw-naw-as has a total registered population of 250 as of July 2016.

As a Coast Salish group, Snaw-naw-as followed a seasonal round centered on hunting, fishing, and harvesting a variety of shellfish and plant resources; manufacturing houses, canoes, and a variety of weapons, nets, traps, and containers; and, utilizing preserving techniques of drying and smoking. Land mammals were hunted and were important in the Straits economy and a wide variety of fruits, roots, berries and other vegetable foods were gathered by the Straits Salish.

Snaw-naw-as people speak Hul'qumi'num, which is one of three branches of the Halkomelem dialect spoken from Nanoose down to Oregon.

Snaw-naw-as is part of the Te'mexw Treaty Association (TTA) along with Scia'new (Beecher Bay) Indian Band, Malahat First Nation, and Songhees First Nation. The TTA is part of the BC Treaty Process and is currently in Stage 5 of the BC Treaty process (i.e. Final Agreement), having signed an agreement-in-principle in April 2015.

Snaw-naw-as is involved with the Naut'sa Mawt Tribal Council along with Stz'uminus First Nation, Klahoose First Nation, Sliammon First Nation, Snuneymuxw First Nation, Halalt First Nation, Malahat First Nation, Tsleil-Waututh Nation, Tsawwassen First Nation and Homalco First Nation.

Snaw-naw-as also filed a *Writ of Summons* with the BC Supreme Court, asserting Aboriginal Title to an area identified in the writ.

II - Preliminary Strength of Claim Assessment

- The marine shipping route would pass within 53 kilometers (km) of Snaw-naw-as' asserted traditional territory, along the east side.
- Snaw-naw-as may include members from the Saalequun Tribe, signatory of the Douglas Treaty signed December 23, 1854. It is not clear to the Province whether Snaw-naw-as is or claims to be a Douglas Treaty beneficiary.
- Canada recognizes the Douglas Treaties and understands that Snaw-naw-as has members who may be 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 Snaw-naw-as, to implement the treaty through agreements with the Crown, 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 Snaw-naw-as' Aboriginal Interests, the Crown is of the view that the legal duty to consult Snaw-naw-as lies at the low portion of the *Haida* consultation spectrum. In consideration of the Project intersecting with Snaw-naw-as' asserted traditional territory, Snaw-naw-as was placed on Schedule B of the Section 11 Order issued by the Environmental Assessment Office (EAO), which affords Snaw-naw-as opportunities to be consulted at a deeper level.

Snaw-naw-as did not participate in the National Energy Board (NEB) hearing process, and did not submit an application for funding to the NEB. The Major Projects Management Office offered Snaw-naw-as \$3,000 to support their participation in consultations following the release of the *NEB Recommendation Report* but did not make use of this funding opportunity.

On October 20, 2016 Snaw-naw-as was issued \$5,000 in capacity funding by EAO to assist with the consultation process.

Snaw-naw-as and the Crown met on an early engagement meeting on June 17, 2014. In addition, the two parts met on September 28, 2016; to discuss the concerns and issues Snaw-naw-as has on the Project.

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

IV - Summary of Key Snaw-naw-as Issues and Concerns Raised

The Crown has gained its understanding of Snaw-naw-as' issues and concerns through the engagement with the Crown and an open letter dated June 15, 2016 sent to Prime Minister Trudeau, Alberta Premier Rachel Notley, and British Columbia Premier Christy Clark from a collective of Aboriginal groups. This letter identifies interests and concerns related to Indigenous consent of the Project and the Project's consultation process. The Crown also understands that Snaw-naw-as contacted the proponent regarding procurement and employment issues.

This section offers a summary of the key issues raised by Snaw-naw-as, 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 Snaw-naw-as' key Project-related issues and concerns are summarized below:

Methodology, Process and Consultation

- Snaw-naw-as stated that they were left without sufficient funding to effectively even apply to participate on the NEB process; and
- Snaw-naw-as believes it is better for them to support the submissions of other First Nations with common interests and concerns to their own. They believe that the Tsleil-Waututh (Burrard) Nation's concerns most closely aligned with their own.

Economic Impacts

- Snaw-naw-as showed concern with the lack of economic benefits for them.

Cumulative Effects

- The Crown understands that Snaw-naw-as contacted the proponent regarding procurement and employment issues;
- Lack of mitigation plans for the effects of the Project on the Southern Resident Killer Whale;
- Lack of funding for detailed studies; and
- Snaw-naw-as is concerned for the development on the Salish Sea. Snaw-naw-as considers that there is a need to protect the environment for future generations.

Impacts on Treaty Rights

- Project impacts on fish and fish habitat, as well as the impact on Snaw-naw-as right to fish.

Impacts from Increased Vessel Traffic

- Snaw-naw-as is concerned about on-shore pollution from increased shipping traffic;
- Marine safety issues in general; and
- Insufficient tug capacity due to the increase on vessel traffic.

Accidents and Malfunctions

- Snaw-naw-as is concerned about any spills that could potentially directly impact their members and their fishing activities as well as damage the environment;
- The effectiveness of a spill response is of particular concern for Snaw-naw-as; and
- Snaw-naw-as demonstrated their concern with potential accidents related to the interaction between large and small vessels.

Accommodation Proposals

Snaw-naw-as provided the federal and provincial Crown with proposed accommodation measures to consider in relation to accommodating potential impacts of the Project on Snaw-naw-as' Aboriginal Interests.

Snaw-naw-as identified the following accommodation proposals:

- Increased tug capacity;
- Economic benefits to the community should the Project proceed;

- Funding for detailed studies to determine Project impacts on Snaw-naw-as;
- Ensure that current and increased tanker traffic does not impact their ability to fish (for commercial and traditional use);
- Compensation in the event of a spill for both economic/cultural losses; and
- Measures to address cumulative impacts of development.

Section 4.2.6 and 5.2 of this Report provide an overview of how the Crown has considered accommodation and mitigation measures to address outstanding issues identified by Aboriginal groups. Accommodations proposed by Snaw-naw-as 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.

Snaw-naw-as' Response to *NEB Recommendation Report*

No specific comments were received by the Crown from Snaw-naw-as on the *NEB Recommendation Report*.

V - Potential Impacts of the Project on Snaw-naw-as' Aboriginal Interests

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

The discussion in this section focuses on potential impacts of the Project on Snaw-naw-as' Aboriginal Interests. These potential impacts are characterized by considering how the Project could affect several factors important to Snaw-naw-as' 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 Snaw-naw-as' Aboriginal Interests considers information available to the Crown from the NEB process, consultation with Snaw-naw-as, Snaw-naw-as' 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.

It is the Crown's understanding that Snaw-naw-as did not participate in a traditional land and resource use study for the Project. However, Snaw-naw-as identified concerns throughout the NEB process and Crown consultation process related to potential Project impacts on Snaw-naw-as' Aboriginal Interests.

Impacts on Hunting, Trapping and Plant Gathering

The general direct and indirect effects of the Project on hunting, trapping, and gathering, along with key mitigation measures, are described in Section 4.3.1 of the main body of this Report. Conditions in the NEB Recommendation Report, if the Project is approved, would either directly or indirectly avoid or reduce potential impacts associated with hunting, trapping, and plant gathering sites (Section 4.3.1 of this Report). The proponent would implement a range of mitigation measures that would directly or indirectly reduce potential Project-related marine shipping impacts on Snaw-naw-as' 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 Snaw-naw-as, Snaw-naw-as' 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 Snaw-naw-as' hunting, trapping and plant gathering activities.

Impacts on Marine Fishing and Harvesting

Snaw-naw-as community members fish and gather seafood throughout their traditional territory. Snaw-naw-as raised several specific concerns with potential Project-related impacts on their marine fishing and harvesting activities:

- The Project will have an impact on fish and fish habitat;
- Impacts on Snaw-naw-as' right to fish; and
- Increased tanker traffic could impact Snaw-naw-as' ability to fish for commercial and traditional use.

The general direct and indirect effects of Project-related marine shipping activities on marine fishing and harvesting, along with key mitigation measures, are described in Section 4.3.3 of the main body of this Report. Project-related marine vessels are expected to cause temporary disruptions to Snaw-naw-as' marine fishing and harvesting activities. Community members could be discouraged from travelling to marine fishing and harvesting sites that require these members to cross shipping lanes. As described in Section 4.3.3, the proponent will be required to communicate Project-related vessel timing and scheduling to Aboriginal groups through a public outreach program (NEB Condition 131). This communication would allow Snaw-naw-as 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 Snaw-naw-as' cultural activities and sharing of marine food with the community. The proponent would implement a range of mitigation measures that would directly or indirectly reduce potential Project-related marine shipping impacts on Snaw-naw-as' marine fishing and harvesting activities, including plans to implement, monitor and comply with marine shipping-related commitments in cooperation with affected Aboriginal groups, and scheduling and notification of Project activities (via the proponent's marine public outreach program).

In consideration of the information available to the Crown from the NEB process, consultation with Snaw-naw-as, Snaw-naw-as' 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 Snaw-naw-as' marine fishing and harvesting activities.

Impacts on Other Traditional and Cultural Practices

Snaw-naw-as raised specific concerns with potential Project-related impacts on other traditional and cultural practices including cumulative impacts of development on the Salish Sea and the need to protect the environment for future generations, as well as concerns about economic and cultural losses in the event of a spill.

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 Snaw-naw-as' 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.

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 Snaw-naw-as during the NEB and Crown consultation processes.

In consideration of the information available to the Crown from the NEB process, consultation with Snaw-naw-as, Snaw-naw-as' 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 Snaw-naw-as other traditional and cultural practices.

Impacts Associated with Accidental Tanker Spills

Snaw-naw-as expressed concerns regarding the impact of a potential oil spill on their Aboriginal Interests, including the effects of a potential spill on

- The Fraser River;
- Clam and oyster beds, as well as economic benefits related to aquaculture;
- Environment, economy, food, group members, culture and ceremonies; and
- Snaw-naw-as land and water, as well as Snaw-naw-as small vessels.

The Crown acknowledges the numerous factors that would influence the severity and types of effects associated with a tanker spill, and that an impacts determination that relates the consequences of a spill to specific impacts on Aboriginal Interests has a high degree of uncertainty. Section 4.3.6 of the main body of this Report sets out the impacts associated with accidental spills from marine shipping vessels. In consideration of this information and analysis, as well as information available to the Crown on Snaw-naw-as' Aboriginal Interests and concerns raised during the NEB process and Crown consultation process, an accidental oil spill associated with the Project could result in minor to serious impacts, with low likelihood, on Snaw-naw-as' 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 spill¹.

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 Snaw-naw-as' Aboriginal Interests would be negligible-to-minor.

However, given existing use of the marine shipping corridor within areas proximate to the exercise of Snaw-naw-as' Aboriginal Interests and the potential severity of the impacts of a marine spill on the exercise of Snaw-naw-as' Aboriginal Interests, the federal Crown is considering additional measures to further offset the potential impacts of the marine-shipping component of the Project on Snaw-naw-as. 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