



LUMMI INDIAN BUSINESS COUNCIL

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DEPARTMENT _____

DIRECT NO. _____

Jocelyne Beaudet, Panel Chair
Review Panel, Roberts Bank Terminal 2 Project
Canadian Environmental Assessment Agency
22nd Floor, 160 Elgin Street
Ottawa, ON K1A 0H3

RE: Roberts Bank Terminal 2 Project and the Marine Shipping Addendum to the Environmental Impact Statement

Dear Ms. Beaudet:

We would like to take this opportunity to comment on the Environmental Impact Statement (EIS) for the Roberts Bank Terminal 2 (RBT2) Project. Please keep in mind that we did not learn about this project until September 19, 2018 when we received a call from a British Columbia resident. These comments should therefore be considered the first in a series while we conduct a more thorough review of the EIS and its updates, as well as the Addendum to the Environmental Impact Statement (Marine Shipping Supplemental Report). Even at this early stage of our review we identified a number of problems with the process as well as the assessment of the impacts of the project. Our issues and concerns include: *Consultation, Scope of the Assessment, Cumulative Impacts and the Addendum to the EIS (Marine Shipping Supplemental Report), Short List of Impacts of the Proposed Terminal, Baseline Determination and Traditional Ecological Knowledge, and the Cultural Significance and Management of the Xwullemy (the Salish Sea).*

Consultation

First and foremost, we take issue with the failure to contact the Lummi Nation much earlier in the process and provide us with an opportunity for full, prior, and informed consent regarding the EIS. The proposed project necessitates engagement and consultation with all Tribal governments with treaty rights in the United States in the Marine Shipping Area, including the Lummi Nation. As stated in the Canadian Environmental Assessment Act, environmental effects to be taken into account in relation to a designated project or a project include those "outside Canada." Consultation would include discussion of the project's potential impacts on our treaty rights and on our numerous traditional cultural resources and their (tangible and intangible) properties within and adjacent to the marine shipping area. We agree with the common sense recommendation of the Global Affairs Canada when it stated that:

[I]n conducting a review of the project, potential impacts across the international boundary (should) be considered. We consider U.S. agencies as potentially providing constructive input given their expertise and interests in areas under their jurisdiction. For Global Affairs Canada, the goal is to ensure that potential transboundary impacts are included in the review."

The Scope of the Assessment

We strongly disagree with limiting the impact assessment to what is referred to as the designated project, thereby avoiding consultation on the impacts of the inbound and outbound vessel traffic in Canadian as well as American waters. The assessment must include potential project-related vessel impacts on our treaty fishing rights, on our traditional cultural properties, and on the marine environment of the Salish Sea. In addition, the project could impact other critical areas in San Juan County, including the San Juan Islands National Wildlife Refuge, and the Marine Biological Preserve, and the San Juan County Marine Stewardship Area. We are unaware of any legal reason why the marine issues were excluded from the Project and cannot find evidence that Canadian Environmental Assessment Agency has provided a reason for this decision.

Specifically, the impact of the vessel traffic could include but not necessarily be limited to:

1. Interference with fishing in our usual and accustomed fishing grounds and the loss of tribal fishing gear;
2. an increase in the number of large vessels within the Lummi Nation's traditional territory raising serious safety concerns for Lummi tribal fishers and the probability of other collisions or accidents;
3. vessel noise and active as well as passive sonar that is known to have negative effects on marine resources, including the endangered Southern Resident Killer Whale population, and other marine mammals and fish that are culturally significant to the Lummi people;
4. the risk of increased vessel strikes with marine mammals, including the Southern Resident Killer Whale population;
5. wakes from the increased ship traffic that could damage intertidal and shoreline habitat;
6. the potential damage to resources and habitat in the event of an accident or malfunction resulting in the release of bunker fuel or other contaminants; and
7. negative impacts on identified cultural sites and areas within and adjacent to inbound and outbound vessel traffic.

The EIS does not utilize a wealth of extant material relevant to marine shipping associated with the Project that is beyond the proponent's care and control and within the 12 mile nautical mile limit of the territorial sea. This information is invaluable for cross-referencing, corroborating, and assessing site and condition-specific system vessel traffic risk to adequately understand the risk of accidents and oil spills resulting from RBT2's proposed increase in vessel traffic.

Cumulative Impacts and the Addendum to the EIS (Marine Shipping Supplemental Report)

Just as troubling is the decision by the Canadian Environmental Assessment Agency to disregard the cumulative effects on the marine environment identified in the Addendum to the EIS. The report serves to obfuscate the complexity of the impacts as it moves between what it describes as negligible "incremental impacts" and unavoidable and on-going "cumulative impacts." A credible and comprehensive assessment of cumulative effects is a critical factor in determining severity of impacts. It is important to not reduce it to simply one of several factors, but rather to recognize that it is a stand-alone stage of the overall impact assessment process.

It is our understanding that these cumulative environmental effects will not be considered by the Minister but that they will only be used to inform the federal government in its broader role as regulator of marine shipping. We respectfully request a return to holistic science, not to mention common sense, so that any environmental effects generated by the Project be considered by the Minister in her decision on the Project, whether or not those effects occur in areas under the jurisdiction of the Vancouver Fraser Port Authority.

Short List of Impacts of the Proposed Terminal

The assessment of the impacts of the proposed terminal on Chinook salmon is wholly inadequate. It is abundantly clear that Terminal 2 could result in substantial further negative impacts to juvenile Chinook. In our view what happens to the Chinook at Terminal 2 has a direct impact on what happens to our fishers in our traditional territory. We believe this fact invokes the spirit and intent of the Pacific Salmon Treaty wherein it is observed that, "A high degree of bilateral cooperation is required to limit the harvest of one country's salmon by the other and to help ensure conservation."¹ Even as we are one people despite the international border, it remains one indivisible Salish Sea with an increasingly imperiled natural heritage divided by artificial boundaries and internally conflicted bureaucracies.

The Fraser River is the predominant source of salmon into the Salish Sea. The tidal marshes in the estuary provide food, shelter and acclimatization to salt water for juvenile salmon prior to their migration to the open ocean. Significant degradation of the near-shore ecosystems at Roberts Bank have already occurred due to the existing port structures. Terminal 2 would further degrade this habitat. The effects of the existing causeway and terminals on juvenile Chinook out-migration from the river to the ocean are wholly unknown and a study of effects from the previous terminal expansions has never been performed.

Overall, the Project has the potential to cause major adverse effects on juvenile Chinook, adding to cumulative effects currently experienced by this value component in the assessment area. Cumulative effects to the Lower Fraser and estuary already include, but are not limited to:

1. the loss/alienation of at least 70% of floodplain;
2. 70% of estuarine habitats are now diked or armored and converted to human uses;
3. an array of pollutants discharged from sewage treatment plants and industrial activities;
4. a drastic recession of marsh across Sturgeon Bank, and trifurcation schemes with numerous jetties in the estuary, including the existing Roberts Bank Terminal causeway, altering the flow of water and sediment in the estuary, changing salinity gradients and the ability of juvenile salmon and other fishes to move throughout the estuary.

¹ In the recent statement, Fisheries and Oceans Canada recently stated that the Treaty includes "a commitment by Canada and the United States... to ensure that both countries receive benefits equal to the production of salmon originating in their waters."

These are only some of the cumulative changes to the Regional Assessment Area which the proponent failed to adequately represent. A full evaluation should be requested for the panel to be able to accurately understand the potential for significant cumulative effects on juvenile Chinook.

Baseline Determination and Traditional Ecological Knowledge

We also take issue with what is defined as a “baseline” in the assessment of the impacts of the project. We were unable to find the rationale behind the definition of the project’s environmental baseline. We believe that the study should utilize a baseline determined by archival research and interviews with tribal historians regarding the estimated pre-industrial baseline conditions, and identify a trajectory of change over time for specific value components integral to the treaty and inherent rights-based activities of the Lummi Nation. The ever-shifting, forward moving baseline leads to an ever-diminishing resource baseline and to a process in which the impact assessment is little more than a means for rationalizing development, denaturing increasingly scarce habitat, and managing extinction.

As we stated in the section on *Consultation*, this process would include “discussion of the project’s potential impacts on our treaty rights and on our numerous traditional (tangible and intangible) cultural resources and properties in the marine shipping area.” We need to stress the legitimate role that our traditional ecological knowledge and our Natural Law plays in framing our understanding of impacts on the natural and cultural heritage of the Salish Sea. Too often we are asked to place our case in terms convenient to the relevant governmentalities and to scientific conventions. It is our position that when assessing the impacts on our natural and cultural heritage sites and areas, the nature and extent of the impacts, as well as the any mitigation measures, must be based on a culturally-appropriate frame of reference. This would include the use of traditional ecological knowledge and the value components of our traditional Natural Law.

The Cultural Significance and Management of the Xwullemy (the Salish Sea)

The Lummi Nation has informed state and federal agencies that we hold that the Salish Sea is eligible for the National Register of Historic Places (NRHP), for listing as a National Historic Landmark, and for inclusion in the World Heritage List, for its association with the culture, traditions, and history of the Lummi people. (Please see attached Cultural Significance and Management of the *Xwullemy* (Salish Sea)). The value components that contribute to its cultural, biological, and spiritual significance that could be impacted in areas A-G of the project include, but are not limited to:

1. reef net fishing sites (*Sxw'olet*);
2. fish, shellfish and marine mammals, including our relatives the killer whales (*qwe lhol mech ten*);
3. avian life and plant life; and
4. water quality and air quality.
5. Food for our *qwe lhol mech ten* our black fish relations (killer whales).

The United States and Canada are signatories to the *United Nations Convention Concerning the Protection of the World Cultural and Natural Heritage* that may be considered as a guide towards consultation on the project. The Convention defines "cultural heritage" sites, in part, as "works of man or the combined works of nature and man, and areas including archeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view. " It defines "natural heritage", in part, as "geological and physiographical formation and precisely delineated areas which constitute habitat of threatened species of animals and plants of outstanding universal value from the point of view of science or conservation:" Further potentially applicable guidance, as related to the project, is specified in Article 5 (d) "to take the appropriate legal, scientific, technical, administrative and financial measures necessary for the identification, protection, conservation, presentation and rehabilitation of this heritage."

We believe the Convention should serve as a basis for consultation with the Canadian government, not only about the impact on and protection of *Chelh-ten-em* (Point Roberts) , *Xwe-chi-eXen* (Cherry Point) and the *Sxw'olel* (reef net sites), but also on the Southern Resident Killer Whale (*qwe lhol mech ten*) population as a "habitat of threatened species of animals of outstanding universal value from the point of view of conservation."

We request our comments be placed in the record, that we are a designated "interested party", and that we are consulted made aware of any and all activities relatives the further development of the assessment process for Roberts Bank Terminal 2.

Respectfully yours,



Merle B. Jefferson, Sr.
Natural Resources Department Director
Lummi Nation

cc: Washington State Department of Ecology (Thomas Buroker)
Washington State Historic Preservation Office (Rob Whitlam)
SRKW Task Force (Stephanie Solien)
National Oceanographic and Atmospheric Administration (Amilee Wilson)
Sustainable Fisheries Resource Advisory Council of Canada (Vincent.Hughes)
Pacific Salmon Treaty (Sukhraj Sihota, National Correspondent, Policy Branch)
Linda Sturgis, Captain, United States Coast Guard (Captain of the Port, Sector Puget Sound)



**The Cultural Significance and Management
of the
Xwullemy (Salish Sea)**

Cultural Significance of the Salish Sea

- I. The Salish Sea, known in the Lummi language as *Xwullemy* has been the home of the Lummi and other tribes since time immemorial. It defines the identity of the Lummi Nation and sustains our existence. It is intimately associated with virtually all the events and patterns of events in history that have defined the Lummi Nation as a culture.
- II. The 1855 Treaty of Point Elliott, which like other treaties executed by tribal governments and the United States government, constitutes the supreme law of the land, guarantees to the people of the Lummi Nation the right to fish in their usual and accustomed places, which comprise the fresh and salt waters of the Salish Sea.
- III. The Lummi Nation holds that the Salish Sea is eligible for the National Register of Historic Places (NRHP), for listing as a National Historic Landmark, and for inclusion in the World Heritage List, for its association with the culture, traditions, and history of the Lummi people.
- IV. The fish, shellfish, marine mammals, avian life, plant life, water quality and air quality of the Salish Sea all are elements that contribute to its cultural significance, as do the traditions and traditional lifeways of the Lummi people.

Management of the Salish Sea and its Contributing Elements

- I. In their compliance with federal and state laws the Lummi Nation expects agencies of the federal, state, and local governments to consult in good faith (i.e., adhere to the principles of full, prior, and informed consent) with the Lummi Nation to avoid adverse effects on the tangible and intangible cultural properties of the Salish Sea, and to adopt such measures as are agreed upon to restore culturally significant aspects of the Salish Sea that have deteriorated or been adversely affected by human activities over the years. Until such time as there is meaningful consultation with the Lummi Nation and it formally agrees with the proposed measures, our position should be construed as opposed to the proposed activity. Any action contrary to this position would be in violation of our treaty, the Supreme Law of the Land.
- II. The Lummi Nation expects that such consultation will be carried out with full respect for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- III. While the Lummi Nation does and will cooperate with other tribes and governments to ensure the proper management of the Salish Sea and its contributing elements, no one but the Lummi Nation is authorized to speak for the Lummi Nation without the Lummi Nation's explicit agreement. We expect all agencies to adhere to the protocols of government-to-government relations.

LIBC Approved March 13, 2018

