

# GCT Deltaport Expansion – Berth Four Project

INCIDENTAL ACTIVITIES WORKSHOP  
MARCH 29, 2022



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# Session overview

Topic	Presenter
<b>Welcome and Introductions</b>	Agency/EAO
<b>Assessment Overview</b>	Agency/EAO
<b>Incidental Activities and Geographic Scope</b> <ul style="list-style-type: none"><li>- Marine Shipping</li><li>- Rail</li><li>- Road</li></ul>	Agency/EAO
<b>Questions and Discussion</b>	Indigenous nations
<b>Next steps</b>	Agency/EAO



# Housekeeping Rules

- Please keep your microphone muted and video turned off during the presentation.
- Questions can be asked at any time in the Zoom chat
- Questions can also be asked out loud by using the "raise your hand" function in Zoom and waiting to be called on.
- Anonymous questions can be sent to the "Questions Keeper" via chat or if you would like to follow up after the session.
- Notes will be taken during this session and circulated to participants for verification and then posted to the registry. Please let us know if you do not want your question or comment captured in the notes.
- Please be courteous and respectful!



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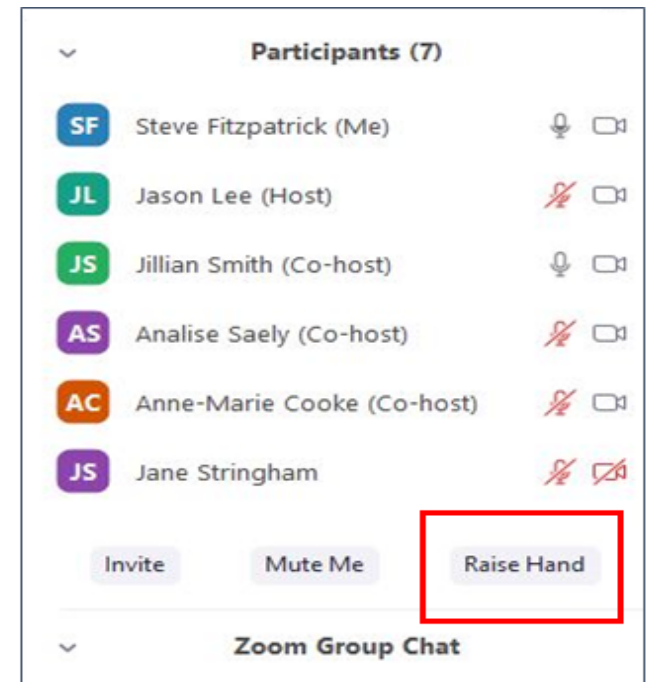


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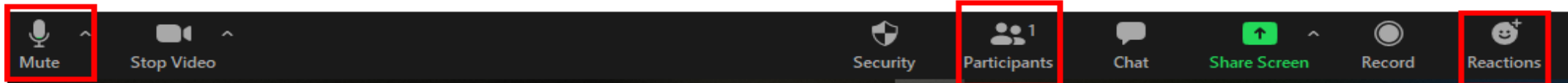
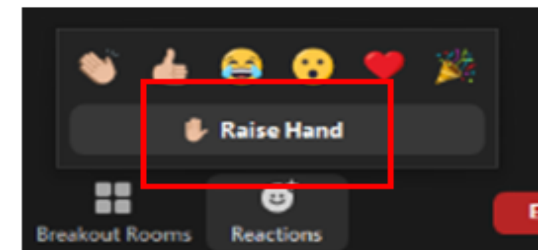
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- Click the “raise hand” function, or type the question into the chat
- If you are on the phone, press \*9 to ask a question
- Please mute your microphone unless speaking
- \*6 - Toggle mute/unmute.
- \*9 - Raise hand.



OR



## PROJECT OVERVIEW



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# Proposed project



- Link to GCT Video for more information [GCT Deltaport Expansion Berth Four Project - November 2021 Project Update – YouTube](#)

# ASSESSMENT OVERVIEW



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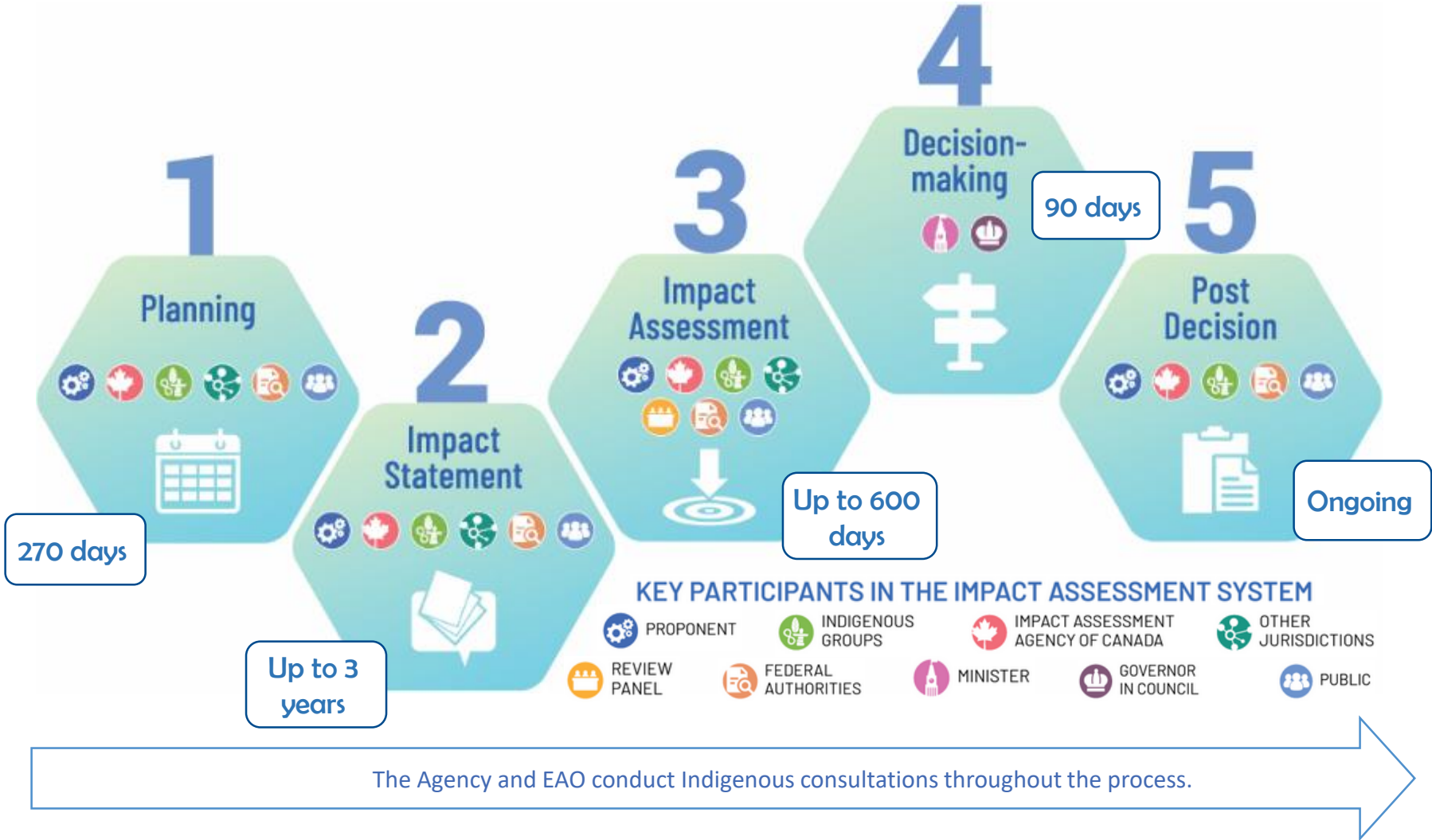
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# Assessment Process





## INCIDENTAL ACTIVITIES AND GEOGRAPHIC EXTENT



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# What is meant by “Incidental Activities”?

DEFINITION OF INCIDENTAL: LIABLE TO HAPPEN AS A CONSEQUENCE OF (AN ACTIVITY)

- The following was taken into account in determining whether activities are incidental to the designated project.
  - nature of the proposed activities and whether they are subordinate or complementary to the designated project;
  - whether the activity is within the care and control of the proponent;
  - if the activity is to be undertaken by a third party, the nature of the relationship between the proponent and the third party and whether the proponent has the ability to “direct or influence” the carrying out of the activity;
  - whether the activity is solely for the benefit of the proponent or is available for other proponents as well; and
  - the federal and/or provincial regulatory requirements for the activity.
- IAAC and EAO also considered whether the activities could have an adverse impact on the exercise of Indigenous rights.
- Geographic extent for incidental activities is not the same as the scope of the assessment
  - geographic and temporal scope of the assessment of effects and cumulative effects may vary per valued component according to the assessment methodology provided in the Joint Guidelines



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## Incidental Activities and Geographic Extent

- The Agency and EAO received **comments on the geographic extent** of the following activities related to the project:
  - Marine shipping incidental to the project beyond the 12 nautical mile limit of the territorial sea of Canada
  - Road transportation beyond the proponent's lease boundary
  - Rail transportation beyond the proponent's lease boundary
- The final determination of the geographic extent of these activities will be reflected in the final Joint Guidelines and BC Process Order in consideration of the comments received.



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## MARINE SHIPPING



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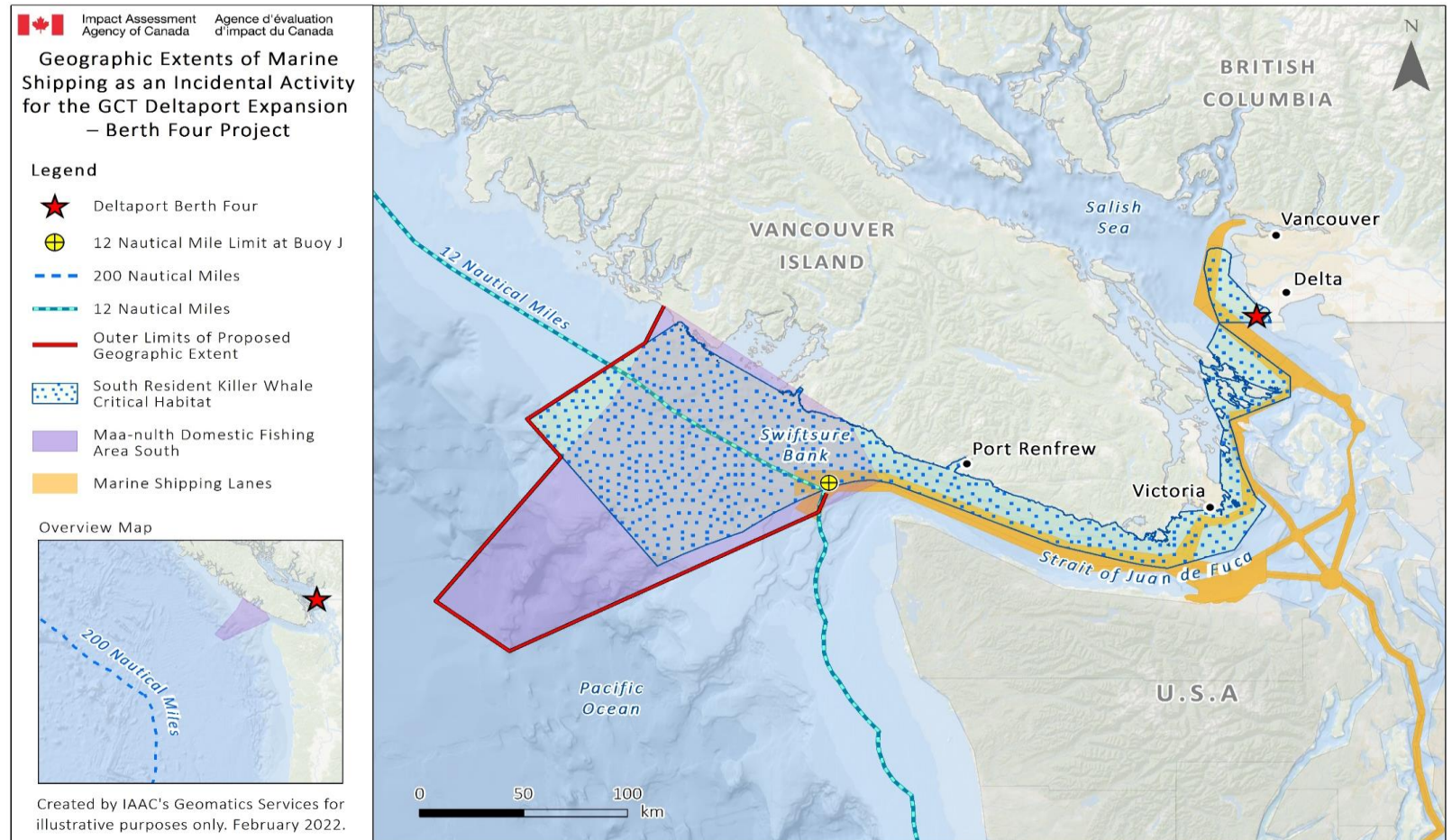


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# Marine Shipping

- The Agency and EAO are of the preliminary view that marine shipping activities with a geographic extent up to the outer limits of Southern Resident Killer Whale critical habitat and the Maa-nulth Domestic Fishing Area South is part of the project



## Marine Shipping cont'd: Federal jurisdiction in Canadian maritime zones

- Canada's territorial sea extends 12 nautical miles from the coast. Within this zone, Canada generally has authority to regulate vessels and manage vessel traffic, subject to international conventions and treaties with other nations, and as long as any such regulation does not impinge upon the “right of innocent passage” which all vessels enjoy within the territorial sea.
- Beyond the territorial sea out to 200 nautical miles is Canada's Exclusive Economic Zone (EEZ). The EEZ is not part of Canada and Canada has less authority over foreign vessels that transit through the EEZ. Instead, international law gives Canada, as a coastal State, jurisdiction over, and specific powers, respecting the EEZ, including control over natural resource exploitation and certain authorities relating to the protection and preservation of the marine environment. For example, Canada may require foreign vessels in the EEZ to comply with generally accepted international rules and standards respecting pollution.
- Further, customary international law gives states the right to impose regulations for foreign vessels that voluntarily call on their ports. In some cases, Canada may be able to use these kinds of regulations to require vessels traveling through their EEZ to meet particular pollution standards.



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RAIL



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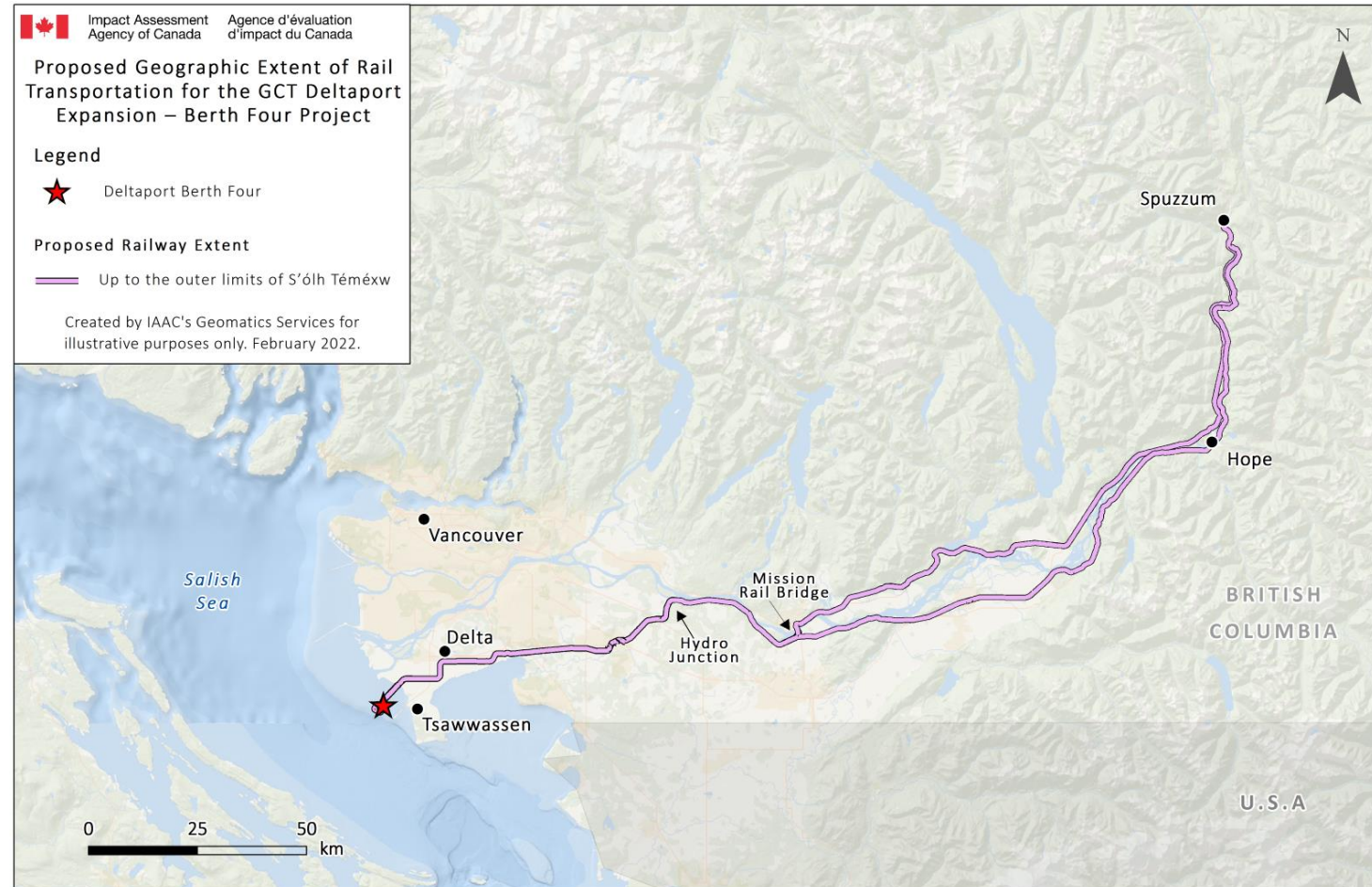


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# Rail Transportation

- The Agency and EAO are considering rail activities with a geographic extent up either to Hydro Junction or to the outer limits of S'ólh Téméxw as part of the project





## Rail Transportation cont'd

- Transport Canada is responsible for federal transportation policies and programs that promote safe, secure, efficient and environmentally responsible transportation.
- Transport Canada administers the regulations, rules, and standards pursuant to the *Railway Safety Act* with respect to federal railways.
- Under its Rail Safety Program, Transport Canada addresses rail safety complaints and concerns; administers funding programs; promotes public education and awareness of rail safety hazards; and actively engages diverse groups providing education and awareness on Rail Safety Programs.
- Project-related goods transported by rail will be carried by CN and CP rail. Both are federally-regulated rail companies.



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## ROAD TRANSPORTATION



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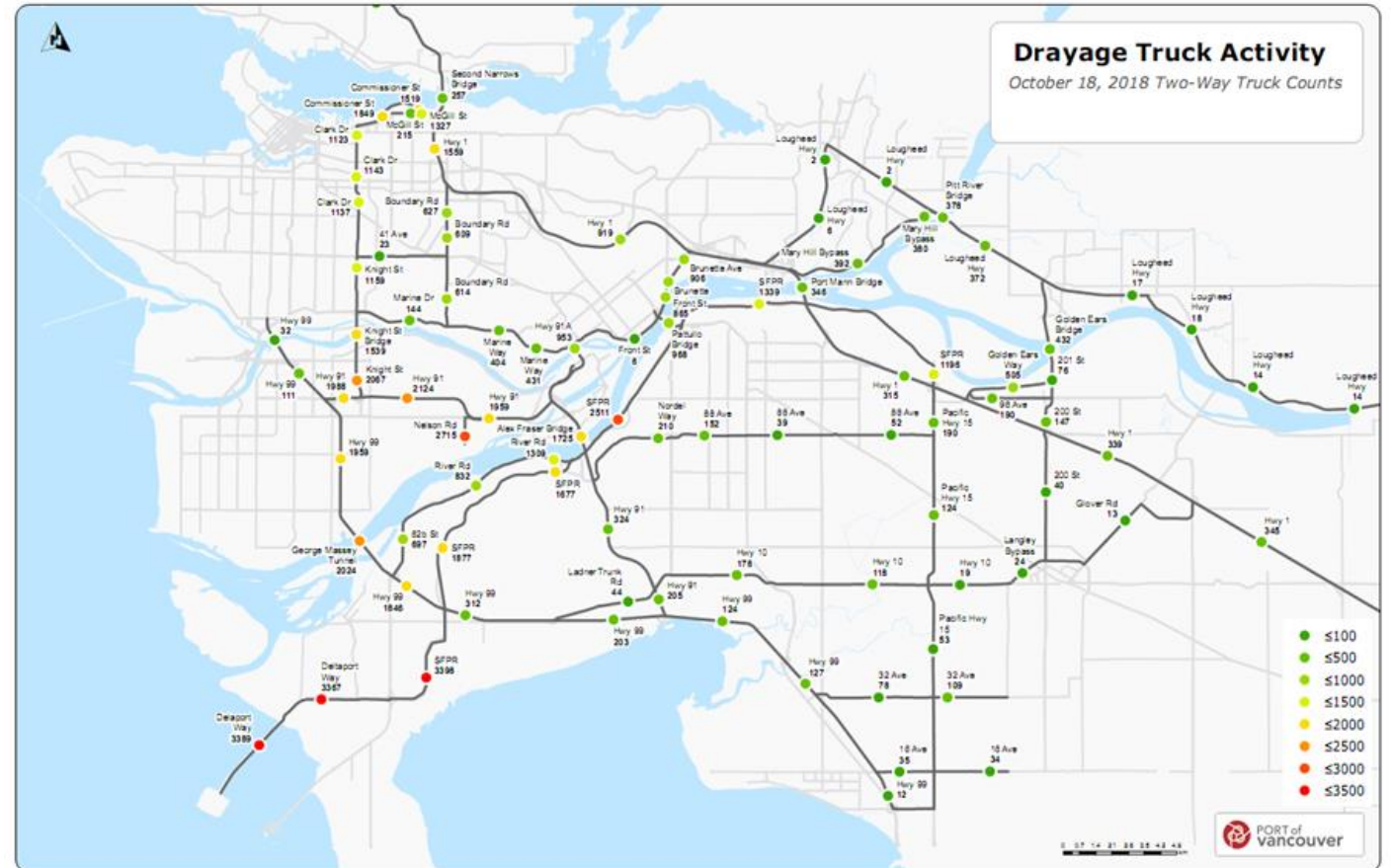


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# Road Transportation

- The Agency and EAO are of the preliminary view that road transportation be an additional factor considered in the assessment.
- Comments from Indigenous Nations, local government and the public highlight concerns regarding increased port-related traffic



## Road Transportation Cont'd

- Provincial highways are managed by the BC Ministry of Transportation Infrastructure (MOTI), who look after both the development of and safety of highways in BC, including the terminal causeway. Proponent information identifies Highways 1, 7, 9, 10, 17, 91, and 99 as potentially affected by Deltaport 4 trade-related transportation
- Effects of road use and development associated with the project may have further impacts that overlap with other areas of provincial interest i.e. local air quality, human health, and agricultural practices.
- MOTI addresses downstream effects of rail network fluidity and its impacts on provincial road infrastructure.
- MOTI notes that more work may be needed to verify truck traffic volumes and forecasted impacts for regional road networks including background traffic growth and development near DP4



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# QUESTIONS AND DISCUSSION FROM INDIGENOUS NATIONS



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## Discussion questions

### Marine Shipping

- Are there any aspects of the assessment that you think may not be captured between the proposed extent and the 200 nautical mile limit?
- Are there any key considerations missing from this proposed geographic extent?
- Is there any additional information not in your submissions you think should be considered?

### Rail/Road

- Are there any key considerations missing?
- Is there any additional information not in your submissions you think should be considered?

### Rail

- Canada and BC have a statutory obligation to assess Project impacts on the rights of Indigenous nations as well as a duty to consult, and, where appropriate, accommodate. Which option would best allow for an assessment of Project impacts on the rights of Indigenous nations?



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## NEXT STEPS



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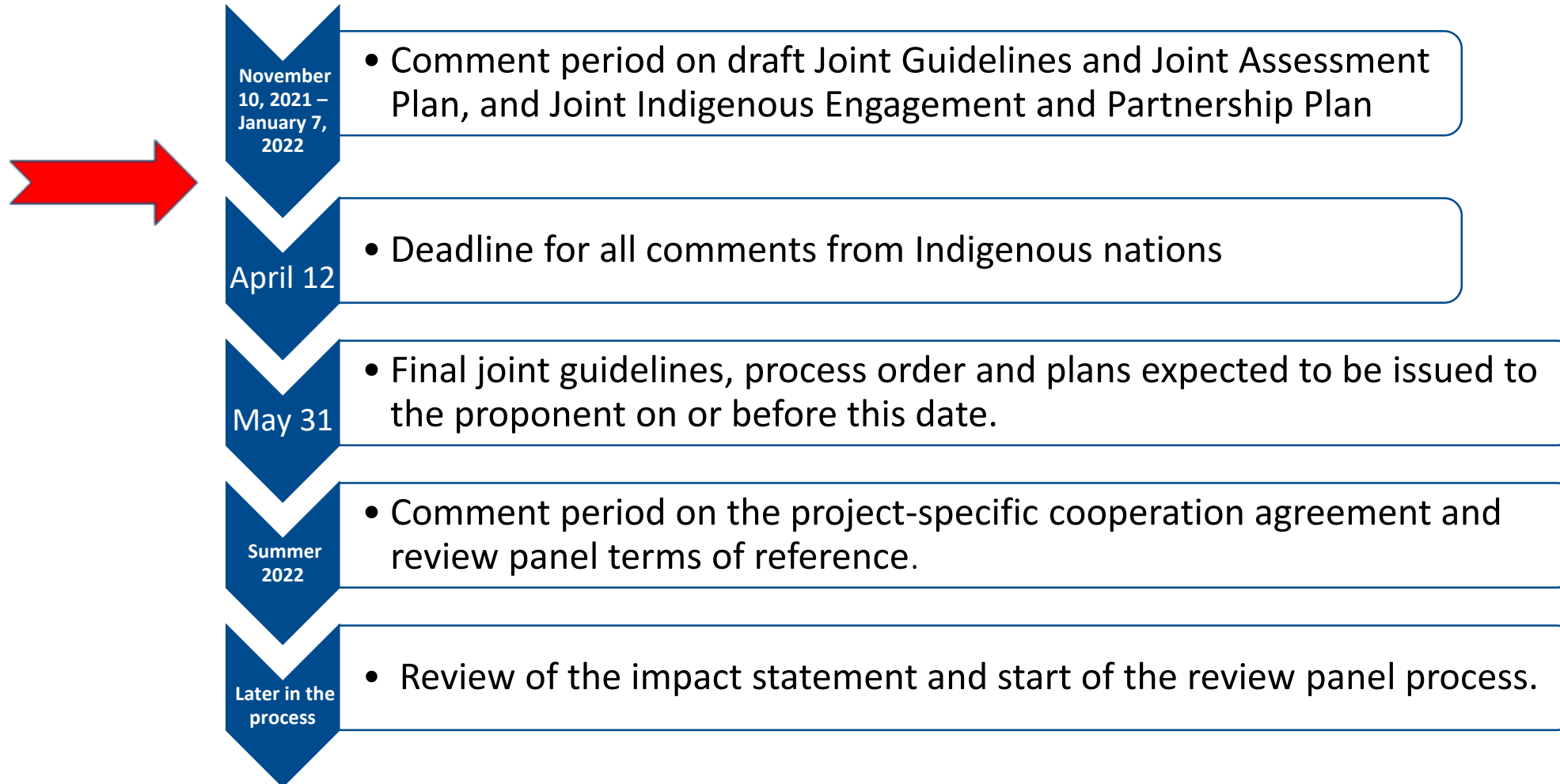
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# Next Steps





## Next Steps

- Additional comments to [deltaport@iaac-aeic.gc.ca](mailto:deltaport@iaac-aeic.gc.ca)
- Follow up questions, 1:1 meetings, please email:
  - [Analise.Saely@iaac-aeic.gc.ca](mailto:Analise.Saely@iaac-aeic.gc.ca)
  - [Mabel.MartinezDussan@gov.bc.ca](mailto:Mabel.MartinezDussan@gov.bc.ca)



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Thank you!

Questions?



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## Incidental Activities Workshop - GCT Deltaport Expansion - Berth Four Project

March 29<sup>th</sup>, 2022

### Workshop Description:

The Impact Assessment Agency of Canada (IAAC) and the British Columbia Environmental Assessment Office (BCEAO) held a virtual workshop on incidental activities for the GCT Deltaport Expansion – Berth Four Project (DP4), specifically for Indigenous nations on **Tuesday, March 29<sup>th</sup>, 2022: 10AM – 12PM PST.**

The information session included the following:

1. Project and Assessment Overview
2. Overview of preliminary conclusions on incidental activities and geographic scope of Marine Shipping, Rail transportation and Road transportation related to the DP4 Project
3. Next steps

### Presenters

Impact Assessment Agency of Canada	Jocelyn Harrington, Samantha Sabo, Céline Monfils, Analise Saely, Kate Witherly
British Columbia Environmental Assessment Office	Jessie Hannigan

### Indigenous Participation

Representatives present from	<ul style="list-style-type: none"> <li>• Cowichan Tribes</li> <li>• Esquimalt Nation</li> <li>• Katzie First Nation</li> <li>• Kwantlen First Nation</li> <li>• Maa-nulth First Nations             <ul style="list-style-type: none"> <li>• Huu-ay-aht First Nations</li> <li>• Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations</li> <li>• Toquaht Nation</li> <li>• Uchucklesaht Tribe Government</li> <li>• Yuuʷəʔiʔəʔ Government - Ucluelet First Nation</li> </ul> </li> <li>• Malahat First Nation</li> <li>• Penelakut Tribes</li> <li>• Seabird Island Band</li> <li>• Semiahmoo First Nation</li> <li>• Sci'aneuw First Nation</li> <li>• Snuneymuxw First Nation</li> <li>• S'ólh Téméxw Stewardship Alliance</li> <li>• Tsawout First Nation</li> <li>• Tsartlip First Nation</li> </ul>
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	<ul style="list-style-type: none"> <li>• Tseil-Waututh First Nation</li> <li>• Ts'uubaa-asatx</li> </ul>
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**Observers attended from Global Container Terminals, as well as federal departments and provincial ministries.**

### **Discussion – Marine Shipping as an incidental activity to the DP4 Project**

IAAC and BCEAO are of the preliminary view that marine shipping activities with a geographic extent up to the outer limits of Southern Resident Killer Whale critical habitat and the Maa-nulth Domestic Fishing Area South is part of the project.

- Maa-nulth noted that the scoping of the marine shipping component should be expanded to include the Northern area of Maa-nulth’s Domestic Fishing Area at a minimum. Maa-nulth stated that ships will be traversing through their territorial waters, and could have impacts on marine mammals, and bring invasive species into the area.
- IAAC stated that information from the [Coast Guard analysis](#) (Jun 28, 2019) on tracking where the ships go once they leave the shipping lanes was taken into account in determining the geographic scope for marine shipping. Based on the data from Coast Guard, most of the container ships are going through the Southern portion of Maa-nulth’s Domestic Fishing Area. IAAC thanked Maa-nulth for raising that ships are also going through the Northern Area, and noted that they will get more data on the number of container ships moving through this area.
- Maa-nulth stated they are able to provide IAAC and BCEAO with maps displaying the shipping patterns in the Northern Area, as they had filed these maps in the RBT2 process in response to an Information Request. Maa-nulth noted that this data is a few years old. Maa-nulth further stated that through the Cumulative Effects of Marine Shipping (CEMS) program, there is additional data showing container ships going North-West through Maa-nulth’s Domestic Fishing Area, and they will follow-up with IAAC on this.
- Malahat Nation: “What are the other options for classification of Marine Shipping Activities other than ‘incidental’? Would the project proceed if Marine Shipping were not to be involved? Assuming the answer to that question is no, it seems that marine shipping is an integral part of the Project.”
- IAAC responded that in designating marine shipping as incidental to the DP4 Project, it would be assessed as part of the Project. Therefore, in the Joint Guidelines, there would be direction to the Proponent on what information to collect on marine shipping. IAAC noted that GCT does not have care and control of the ships moving to the outer limits of the proposed scope of Maa-nulth Domestic Fishing Area South; however the federal government has jurisdiction in the ocean environment. Under the new *Impact Assessment Act*, complementary measures can be considered to address impacts from marine shipping, which may include federal programs, plans and policies that could be relied upon to address impacts. IAAC stated they would like to work with Indigenous nations to understand what the impacts from marine shipping associated with the DP4

Project would be, and what the Indigenous nations would like to see as solutions to those specific impacts.

- Malahat is wondering why marine shipping is not included as part of the project description as it appears to be an integral part of the project?
- Semiahmoo First Nation: “We do need to know, especially about killer whales.”
- IAAC responded that they have included all critical habitat for SRKW in the geographic extent to make sure it is fully assessed. IAAC has heard from nations the importance of SRKW both culturally and environmentally. IAAC stated that they are able to meet with Semiahmoo on their section of the Joint Guidelines to include more content around SRKW as well.
- Ts'uubaa-asatx, “What term did they use in RBT2 for this assessment? Why change the terminology to incidental?”
- IAAC responded that under RBT2, marine shipping was originally designated an “Other Factor to be Considered”, however the decision on TMX led to marine shipping being included as incidental to RBT2. The Minister then changed the Panel Terms of Reference and the Environmental Impact Statement Guidelines for RBT2 ([Link to letter from the Minister](#)) to ensure marine shipping was included as incidental to the Project. IAAC further explained that under the new *Impact Assessment Act*, if marine shipping is determined as incidental to the designated project, it can be considered in the Public Interest Determination.
- Stó:lō asked where the data on the SRKW critical habitat come from?
- IAAC responded that the data come from the Department of Fisheries and Oceans, and provided a link to the data:
  - [https://www.sararegistry.gc.ca/virtual\\_sara/files/plans/Rs-ResidentKillerWhale-v00-2018Aug-Eng.pdf](https://www.sararegistry.gc.ca/virtual_sara/files/plans/Rs-ResidentKillerWhale-v00-2018Aug-Eng.pdf)
- Malahat asked if there is a hierarchy to what is considered incidental to the project, and what would the next level above that be?
- IAAC responded that the determination of being incidental is binary (yes/no).
- Tseil-Waututh Nation stated that for the container ships travelling through Maa-nulth's Northern Domestic Fishing Area, it would be useful to determine their origin/destination. Tseil-Waututh Nation noted there will be increased shipping traffic to and from the Port of Prince Rupert in the near future, and this needs to be looked at as well.
- IAAC responded that they will connect with Transport Canada and Coast Guard on this.
- A participant stated that they do not see the Inside Passage (between Vancouver Island and the Mainland) included in the assessment area.
- IAAC responded that they will find out whether container ships use the Inside Passage and then consider this comment for DP4.
- Ts'uubaa-asatx stated that Transport Canada should be able to identify if there is a shipping lane for this purpose.
- Tseil-Waututh Nation stated that short sea shipping was a concern during the process planning review.

- IAAC responded that they will follow-up with Indigenous nations regarding short sea shipping. IAAC explained that the topics covered today were those that IAAC and BCEAO received the most comments from nations.
- Tseil-Waututh asked where pilots board inbound ships to DP4.
- IAAC indicated that pilots board inbound vessels at the pilot station near Victoria called Brotchie ledge. IAAC also shared a link to the Compulsory Pilotage Areas: <https://ppa.gc.ca/compulsory-pilotage-areas>

### **Discussion – Rail Transportation as an incidental activity to the DP4 Project**

IAAC and BCEAO are considering rail activities with a geographic extent up either to Hydro Junction or to the outer limits of S'ólh Téméxw as part of the project.

- Semiahmoo First Nation asked if there could be a change in the pattern of types of rail cars that would be moving to and from Hydro Junction if DP4 goes ahead? There is a lot of rail traffic that already goes around Semiahmoo, including trains that go through Vancouver city to the Port of Vancouver, Seattle, as well as trains carrying coal.
- IAAC will follow up on this question.
- Seabird Island Band commented the critical question is how many additional trains would go by Seabird. Our community is based in a long, narrow island (4,000 acres). The existing train tracks splits the area in half and affects access to both sides. The discussion paper mentions an increase in 8 additional trains, but those trains are really long. We would like to assess how the increase in traffic would affect our health and economy. There is a big developing area (a business park) between the Fraser River and the highway. Access to this area is really important and additional rail traffic would affect this access.
- IAAC suggested to look into the following memos prepared by GCT for additional information on rail traffic:
  - <https://www.ceaa-acee.gc.ca/050/evaluations/document/142114>
  - <https://iaac-aeic.gc.ca/050/evaluations/proj/81010/contributions/id/56772>
- Seabird Island Band: GCT states that the increase in rail traffic would be only 10%. This increase really affects us in Seabird. CN train cuts our reserve in half. Currently those 8 trains not only affects us socially but we also lose millions in contract opportunities because there is a big train in the middle of our business park. The 10% increase would hinder our economic growth even more. Sixteen trains in 2057 is unimaginable, 4,000 acres is not that big and to have 16 trains over 11,000 feet constantly cutting our territory in half, it is huge for us here at Seabird. This really would affect us in the long run.
- IAAC thanked Seabird for this information, and noted they appreciate this kind of feedback.
- Stó:lō explained that they need to consider not only the number and length of the trains. They should also look into the type of infrastructure required for the expansion of rail traffic, which could be new rail lines, new protection areas, sound protection, etc.

- IAAC: we would need to assess this during the process, it is good to have an idea of the kind of questions that Stó:lō would like to have answered during the assessment.
- Seabird Island Band: “Just to reiterate, in the memo from GCT linked above, the GCT state that they have no care or control over rail traffic outside their lease boundary, and end the paragraph by claiming that the movement of containers is not only beneficial to GCT, but also helps meet economic objectives "across Canada and beyond". It definitely does not help Seabird's economy, and it feels as if our concerns about increased rail traffic will be brushed under the rug because GCT feel that it doesn't fall within their lease boundary. To any GCT representatives on this call, a more empathetic response and tangible solution would be greatly appreciated.”
- GCT: “Thank you for your comment Lyla. We will continue to discuss and assess the impacts of our DP4 project on Seabird Island nation, including the discussions we had two weeks ago. We are not looking to brush anything under the rug.”

### **Discussion – Road Transportation as an incidental activity to the DP4 Project**

IAAC and BCEAO are of the preliminary view that road transportation be an additional factor considered in the assessment.

- Semiahmoo First Nation: “any increase in traffic on highway 99, can have a huge impact of Semiahmoo... recent years when there was traffic going across the border, any increase in traffic makes it impossible to get any emergency services onto our reserve... e.g., no ambulance or fire trucks...those emergency vehicles have to cross Hwy 99 right at the border....and if that access to the Reserve via Beach Road is blocked, people could die.”
- IAAC: we understand this concern about the ability of first responders to access the area, thanks for the comment.

### **Discussion – General questions**

- Seabird Island Band: increase in road traffic brings similar concerns to the ones raised for increase in rail traffic given that the highway and the rail track are only 100 feet apart and both cut the reserve in half, as mentioned before. The map on road traffic would need to include the area up the valley, just like the rail. The communities in the north, such as Seabird, would be impacted from the increase in traffic in the highway; this would affect our health and safety, our economy. Access to farmland is also an issue for Seabird, in addition to the already mentioned access to the industrial park. The speed limits in Highway 7 are high, we already had accidents. Glad to see that Highway 7 has been included in your graph.
- Tsawout First Nation asked about the adverse effect of incidental activities on Indigenous rights. How will UNDRIP be implemented? These activities will have adverse effects. Funding is also an issue? How are you going to implement Tsawout’s Marine Use Law and its links to these incidental activities?

- IAAC responded that the Crown would like to receive input from Indigenous nations on how can we implement Indigenous laws operationally, in a practical level within this process. The Tsawout section in the guidelines can include Tsawout's Marine Use Law.
- Malahat First Nation shared graph on Pathways of effects – happy to share with anyone interested. What are we going to do with effects? Propose to look into triggers for action, at a base level in the ecosystem, look for indicators. Have the capacity to monitor these indicators before and after the project is implemented and identify rates of changes. Tracking results and success of measures. How are we going to work with other stakeholders in the Salish Sea?
- In order to progress meaningful consultation, GCT must identify specific thresholds for impacts that the project is committed to staying within ahead of seeking project approval. Only then can First Nations have meaningful input on whether that level of impact is reasonable or can be supported by the ecosystem. Furthermore, GCT must commit ahead of project approval to concrete actions that will be taken if these thresholds are exceeded. These actions should adopt proven approaches to mitigate any impacts that are beyond the designated threshold. Contingency funding for these additional mitigations should be made available so that addressing impacts above threshold levels is not delayed unduly while funding is secured.
- IAAC: thanks for sharing this work and happy to see and figure out how to include out-of-the box ideas.
- Ts'uubaa-asatx: "Not my place to say, not being athletic, but I do have family that are and regularly attend sporting events hosted by Seabird. That I would think is a traditional activity brought into a modern context. Does the Rail and Road Transportation affect those events?"
- Seabird Island Band: absolutely. There are tremendous amounts of sport events at Seabird. Right now the community is dealing with safety issues: traffic going through at 80 – 100 km/hr, there's a left hand turn coming from the lower mainland side heading toward the east which is really dangerous, plus the lighting of this turn is very poor. The access study done by engineers identified the need to improve this section from a safety perspective. Really appreciate Kat bringing this point up.
- Semiahmoo First Nation: "If other FNS have a similar Marine Shipping Law, maybe others have these as well. Others should make the same comments and get that info into the system quickly".
- IAAC: The Crown encourages nations that have any Indigenous laws that would like to have them incorporated in the DP4 assessment to raise that to us. The guidelines have overarching instructions on how the proponent would assess Indigenous interests. These Indigenous interests include impacts on Indigenous Rights, and how the project could affect the current use of lands and resources for traditional purposes, physical and cultural heritage, health, socio-economic considerations. In addition, each nation has a section in the guidelines where you can provide direction on how to work with your nations on the assessment of the Deltaport Fourth Berth project's impacts on your nation. If your nation has Indigenous Laws that would be applicable to DP4, these could be included in the nation-specific section. Thanks to the nations that have already



provided us directions on the inclusion of Indigenous Laws, and we have included them in those overarching sections already. For example, Section 12 of the Joint Guidelines, talks about describing Indigenous Nation laws, policies and plans, such as environmental stewardship objectives that may be impacted by the Project.

- Seabird explained that sometimes Highway 1 is closed or restricted, and when that happens a lot of traffic end up coming through Seabird. That was the case during the floods on November 15, which lasted for more than a week. This increase in traffic escalates the effects that we are having now.
- Tsawout First Nation asked to have meaningful discussions with IAAC and BCEAO regarding their Marine Use Law, which is not something they just hand over. They noted that every nation is unique and different, and would need to factor this in.
- IAAC: we are happy to meet with each nation to discuss their unique situation and concerns. In addition, we are looking forward to meet with Tsawout to discuss capacity funding and how to incorporate your Laws in the assessment. GCT is also working with nations on the capacity side.

### **Next Steps**

- IAAC's previous timeline of April 16th for the issuance of guidelines and plans was proving challenging due to the number and complexity of comments on this project.
- The Crown requested a timeline suspension from GCT, to allow for the IAAC and BCEAO to work with Indigenous nations through the comments and resolve as many comments as possible. GCT has agreed to a suspension, and the final products are now due May 31st.
- **IAAC and BCEAO will need final comments from all nations by April 12th.** This will allow the IAAC and BCEAO to incorporate the comments into the products and connect with your nations if there are outstanding questions or to loop back if we are not able to address your comment to see what solutions may be available to us to work through the issues together in our nation-to-nation relationship.