

Summary Assessment Report for Roberts Bank Terminal 2 Project (RBT2)

With respect to the application by Vancouver Fraser Port Authority
(VFPA) for an Environmental Assessment Certificate pursuant to the
Environmental Assessment Act, S.B.C. 2002, c. 43

DRAFT: May 9, 2023

TABLE OF CONTENTS

| | |
|--|----|
| Common Terms and Acronym List | 4 |
| 1.0 Introduction | 6 |
| 2.0 Project Description | 6 |
| 3.0 Strategic Context | 15 |
| 4.0 Environmental Assessment Process..... | 16 |
| 4.1 Federal EA Process | 16 |
| 4.2 Provincial EA Process..... | 18 |
| 5.0 Key Conclusions of the Environmental Assessment..... | 19 |
| 5.1 Findings of the Environmental Assessment | 20 |
| 5.1.1 Wetlands | 22 |
| 5.1.2 Salmon | 22 |
| 5.1.3 White Sturgeon | 23 |
| 5.1.4 Barn Owl..... | 23 |
| 5.1.5 Human Health – Air Quality..... | 24 |
| 5.1.6 Human Health – Noise..... | 25 |
| 5.1.7 Visual Resources..... | 26 |
| 5.1.8 Outdoor Recreation..... | 26 |
| 5.1.9 Agricultural Land Use | 27 |
| 5.1.10 Greenhouse Gas Emissions..... | 28 |
| 5.1.11 Fraser River Estuary and Salish Sea | 29 |
| 5.1.12 Accidents and Malfunctions | 30 |
| 5.1.13 Rail Traffic | 31 |
| 5.1.14 Road Traffic | 33 |
| 5.2 Provincial and Federal Conditions | 35 |
| 6.0 Indigenous Consultation and Engagement | 36 |
| 6.1 Indigenous Nations Consultation Activities | 38 |
| 6.2 Key Issues Raised by Indigenous Nations..... | 38 |
| 6.3 Addressing Potential Impacts on Rights | 41 |
| 7.0 Public Consultation | 45 |
| 8.0 Local Government Consultation | 45 |

| | |
|---|----|
| 9.0 Other Jurisdictions | 46 |
| 10.0 Additional considerations | 47 |
| 11.0 Conclusions | 49 |
| 12.0 Schedules | 51 |
| 13.0 Appendices | 51 |
| 13.1 Appendix 1: Major Milestones of the Federal and Provincial EA Processes..... | 52 |

TABLE OF FIGURES

| | |
|--|----|
| Figure 1: Roberts Bank Terminal 2 Project Overview (VFPA 2023)..... | 10 |
| Figure 2: Roberts Bank Terminal 2 Project Components (VFPA 2023) | 11 |
| Figure 3: Roberts Bank Terminal 2 Project Orientation and Layout (VFPA 2015) | 12 |
| Figure 4: Conservation Areas (VFPA 2015) | 13 |
| Figure 5: RBT2 Average Daily Train Movements | 32 |
| Figure 6: RBT2 Container Truck Traffic | 34 |

LIST OF TABLES

| | |
|---|-----------|
| <i>Table 1: Summary of Panel Findings Relating to Provincial Interests.....</i> | <i>21</i> |
| <i>Table 2: Existing Provincial Crown Initiatives</i> | <i>41</i> |

COMMON TERMS AND ACRONYM LIST

| Abbreviation/Acronym | Definition |
|----------------------|---|
| the Act | B.C. <i>Environmental Assessment Act</i> , 2002 |
| the Agency | Impact Assessment Agency of Canada |
| ALR | Agriculture Land Reserve |
| B.C. | British Columbia |
| BNSF | Burlington Northern Santa Fe Railway |
| CAR | Consultation and Accommodation Report |
| CEAA 2012 | <i>Canadian Environmental Assessment Act, 2012</i> |
| CN | Canadian National Railway |
| CP | Canadian Pacific Railway |
| the Declaration Act | <i>Declaration on the Rights of Indigenous Peoples Act</i> , SBC 2019, c 44 |
| Delta | the City of Delta, B.C. |
| DFO | Fisheries and Oceans Canada |
| DP4 | Deltaport Berth 4 project |
| EA | Environmental Assessment |
| EAO | Environmental Assessment Office |
| ECCC | Environment and Climate Change Canada |
| EIS | Roberts Bank Terminal 2 Project, Roberts Bank, Delta, B.C., Environmental Impact Statement, Port Metro Vancouver, March 2015 |
| ENV | Environment and Climate Change Strategy |
| GHG | Greenhouse Gas |
| GTCF | Gateway Transportation Collaboration Forum |
| ha | hectare |
| intermodal | Relating to the transport of goods via container using more than one mode/means of conveyance (such as rail and truck) without handling container contents. |
| intermodal yard | Facility/area capable of handling and transferring cargo between terminal, rail, and road modes of transportation. |
| IR | Information Request issued by the federal Minister of ECCC |
| km | kilometre |
| km ² | kilometres squared |

| | |
|--|---|
| LAA | local assessment area |
| MOTI | Ministry of Transportation and Infrastructure |
| MSA | Marine Shipping Area. The area outside of Vancouver Fraser Port Authority's navigational jurisdiction area within the 12 nautical mile limit of Canada's territorial sea in which potential changes to the physical, biophysical, and human environment (adverse effects to Valued Components) from vessel traffic incidental ¹ to RBT2 were assessed. |
| NO ₂ | Nitrogen Dioxide |
| the Panel | The Federal Review Panel for the Roberts Bank Terminal 2 Project |
| the Panel Report | The Federal Review Panel Report for the Roberts Bank Terminal 2 Project, prepared by the Review Panel for the Roberts Bank Terminal 2 Project, March 27, 2020 |
| the Port | Port of Vancouver |
| the Project | Roberts Bank Terminal 2 Project |
| Provincial Interests (for the purposes of this EAO Report) | Includes matters where the Province of B.C. has jurisdiction, including but not limited to those that relate to: Indigenous nations, public and local government interests; public health; economic interests; Crown land including foreshore and submerged land; provincially managed wildlife and fish species; permits and authorizations needed for the Roberts Bank Terminal 2 Project; and authorities delegated to the Province of B.C. by the Government of Canada. |
| PRT | Provincial Review Team |
| the/this Report | EAO's Summary Assessment Report for the Roberts Bank Terminal 2 Project |
| RBT2 | Roberts Bank Terminal 2 Project |
| SARA | <i>Species at Risk Act</i> |
| SRKW | Southern Resident Killer Whale |
| TC | Transport Canada |
| U.S. | United States |
| VFPA | Vancouver Fraser Port Authority |
| WLRS | Ministry of Water, Land and Resource Stewardship |
| Whole of Government Response | Federal and provincial agency responses to the Review Panel's recommendations to government focused on existing or planned programs that may assist in mitigating the potential effects of the Project as well as addressing the recommendations. |

¹ As per updated Guidelines for the Preparation of the EIS and amended Review Panel Terms of Reference, "marine shipping associated with the Project within the 12 nautical mile limit of Canada's territorial sea is incidental to the marine container terminal and therefore part of the description of the Project for the purposes of the environmental assessment."

1.0 INTRODUCTION

The Vancouver Fraser Port Authority (VFPA) proposes to build and operate the Roberts Bank Terminal 2 Project (RBT2), a new three-berth marine container shipping terminal at Roberts Bank in the City of Delta (Delta) British Columbia (B.C.).

RBT2 required an environmental assessment (EA) under the *Canadian Environmental Assessment Act, 2012* (CEAA 2012), and the B.C. *Environmental Assessment Act, 2002* (the Act). The Canada-British Columbia Agreement on Environmental Assessment Cooperation (2004) provides for a joint provincial and federal review when a project is subject to review pursuant to both the CEAA 2012 and the Act.

On January 7, 2014, the federal Minister of Environment and Climate Change Canada (ECCC) referred RBT2 to an independent Federal Review Panel (the Panel) to conduct the federal EA. On December 19, 2014, the B.C. Minister of Environment and Climate Change Strategy (ENV)² directed the Environmental Assessment Office (EAO) to rely principally on the Panel process, and the consultation with Indigenous nations conducted by the Impact Assessment Agency of Canada (the Agency) for the provincial EA.

The decision whether to issue an EA Certificate for RBT2 under the Act will be made by the B.C. Minister of ENV, and the Minister of Transportation and Infrastructure (MOTI). The EAO has prepared this Summary Assessment Report (this Report) for consideration by the Ministers. This Report:

- briefly describes RBT2 and the federal and provincial EA processes;
- summarizes key findings from the March 27, 2020, [Federal Review Panel Report for RBT2](#) as they relate to potential adverse effects from RBT2 to Provincial Interests, and the federal and provincial conditions proposed to mitigate these effects;
- summarizes consultation with Indigenous nations; and
- presents the conclusions of the Environmental Assessment Office (EAO).

2.0 PROJECT DESCRIPTION

Project Location

RBT2 is a new marine container terminal that would be located next to existing port facilities at Roberts Bank in Delta, B.C. (Figure 1), approximately 35 kilometers (km) south of Vancouver, B.C. RBT2 would be located adjacent to Tsawwassen First Nation Lands and near the community of Tsawwassen.

² Ministry of Environment at the time the Section 14 was signed.

Existing port facilities at Roberts Bank include the coal export facility operated by Westshore Terminals Ltd., and the Deltaport container terminal operated by GCT Canada Limited Partnership. A causeway links these port facilities to road and rail infrastructure that supports the movement of goods within and beyond the Metro Vancouver region.

Project Components

RBT2 would increase the container handling capacity at Roberts Bank by 2.4 million twenty-foot equivalent units. There are three main components to RBT2:

1. A new three-berth marine container terminal (marine terminal);
2. Widening of the existing Roberts Bank causeway to accommodate additional rail infrastructure, and road connections, and utilities; and,
3. Expansion of the existing Roberts Bank tug basin to accommodate additional tugs for assisting in container vessel arrivals and departures.

The new marine terminal would include a wharf and berths for up to three container ships, ship-to-shore gantry cranes, a container storage yard, rail intermodal yards, truck loading and unloading transfer area, and support facilities. The widened causeway would include multi-track rail yards for splitting inbound trains and assembling outbound trains, operations that would be conducted by the Canadian National Railway (CN), Canadian Pacific Railway (CP), and Burlington Northern Santa Fe Railway (BNSF). The widened causeway would also include tracks for setting off locomotives, and tracks for offsetting bad order railcars, and utility infrastructure for the marine terminal. Truck and other vehicle traffic would enter/exit RBT2 at the western (seaward) end of the existing causeway on Roberts Bank Way North.

The total footprint of the RBT2 components, including both land and marine areas is approximately 168.1 hectares (ha). This includes approximately 119.7 ha for the marine terminal (up to approximately 1,700-metres long and 633-metres wide), approximately 45.3 ha for the widened causeway (approximately 5.5 km long, and up to 140 meters wide), and approximately 3.1 ha for the expanded tug basin (VFPA's September 24, 2021, [Designated Project Description](#) provides the latest project details presented by the VFPA). Due to transfers of land from the Province to Canada and the VFPA in 2017 and earlier, the entirety of the marine terminal footprint is on land owned by Canada or land owned by the VFPA.

The rail yard on the existing Roberts Bank causeway and extending inland for approximately 38 kilometers, referred to as the Port Subdivision, are owned by the British Columbia Railway Company under MOTI. Railway operations within the RBT2 footprint will be determined by the operating railways (CN, CP, and BNSF). The existing highway on the causeway is owned and operated by the Province of B.C.

Fisheries and Oceans Canada (DFO) would determine what authorization(s) RBT2 would need under the federal *Fisheries Act*, which may include authorization for the death of fish, and or the harmful alteration, disruption or destruction of fish habitat on Roberts Bank. The land base for the marine terminal would be created by constructing an artificial island adjacent to the existing Roberts Bank terminal by dredging and infilling intertidal and subtidal marine habitat.

Material would be dredged from the RBT2 marine area and combined with Fraser River sand from annual channel maintenance dredging and existing quarry sand, to create suitable fill for marine terminal and causeway construction. Annual Fraser River maintenance dredging was not included in the scope of the RBT2 EA. ECCC determined that RBT2 dredging activities, and the use of dredge material as fill would not require a Disposal at Sea permit under the *Canadian Environmental Protection Act* Disposal at Sea Regulations.

The project location and orientation, including an overview of the layout and components of RBT2 and marine shipping routes, are provided in Figures [1](#), [2](#), and [3](#). Conservation areas near RBT2 are shown in Figure [4](#). Additional project design details are provided in the [Designated Project Description](#) (2021), which provides the latest project details presented by the VFPA.

Proponent Description

The VFPA is the federal agency responsible for the lands and waters that make up the Port of Vancouver (Port), Canada's largest port, and is accountable to the federal Minister of Transport. The VFPA's mandate is to facilitate Canada's trade, while protecting the environment and considering local communities, and to ensure safety in the Port.

Project Phases

Construction of RBT2 is anticipated to take approximately six years. The first three years of construction would include dredging and infilling to create the majority of the land mass for the new marine terminal and the widened causeway. The following three years of construction would include completion of the wharf area, as well as installation of underground utilities and infrastructure including an overpass, road and rail work, terminal buildings, and other ancillary systems and support facilities.

The VFPA anticipates that partial operations could start approximately seven years after construction starts. RBT2 would be fully operational in approximately 2040. During operations, the terminal would operate 24 hours per day, 358 days a year at the berth and 362 days a year at the container and intermodal yards.

Although the overall design life of RBT2, as presented, would be 75 years, the VFPA indicated that it "does not plan to decommission or abandon RBT2. It is assumed that RBT2 would operate in perpetuity and any other future use would be subject to the then-current permitting and regulatory requirements."³

Project Setting

Land and water use in and adjacent to RBT2 includes agricultural activities, protected areas, residential uses, industry including port and terminal use, park lands, Tsawwassen First Nation Lands, and Option

³ VFPA's [Environmental Impact Statement section 4.3.3](#).

lands.⁴

RBT2 would be located on Roberts Bank in the Fraser River estuary, an ecologically productive and sensitive area of coastal B.C. Roberts Bank is a diverse ecosystem of biologically productive intertidal and subtidal sand and mud flats, eelgrass meadows, and marshes. Roberts Bank and its surrounding areas, including Sturgeon Bank, Boundary Bay, the Lower Fraser River and upland areas, have locally and internationally recognized ecological and cultural importance and conservation-related designations. Recently, the Fraser River Estuary was identified as one of Canada's Key Biodiversity Areas⁵ which are sites that play a critical role in the persistence of species and ecosystems. Conservation areas surrounding the marine terminal are shown in Figure 4 below.

Roberts Bank is located within the Fraser River Estuary along the Pacific Flyway for migratory birds, and is adjacent to wetlands designated to be of international importance under the Convention on Wetlands. RBT2 would be located in close proximity to the [Alaksen National Wildlife Area](#), which is managed by the Canadian Wildlife Service, and adjacent to the provincial [Roberts Bank Wildlife Management Area](#), which was established in 2011 to manage critical habitat for fish, waterfowl, shorebirds, and other species. These designated areas are within a broader area referred to as the Fraser River Important Bird Area, which consists of a complex of interconnected marine, estuarine, freshwater, and agricultural habitats that support the greatest combined total number of global, continental, and national bird species in Canada.

Roberts Bank provides important fish habitat for fish species harvested in commercial, recreational, and Indigenous fisheries which are federally managed by the DFO under the *Fisheries Act*.

The proposed marine terminal and marine shipping associated with RBT2 would occur within Southern Resident Killer Whale (SRKW) critical habitat that is federally protected under the *Species at Risk Act* (SARA). SRKW and other aquatic species at risk listed under SARA are federally managed by DFO.

⁴ As per the [Federal Review Panel Report](#) page 17, "Option lands were lands owned by the British Columbia Rail Company and dedicated as railway right-of-way; however, farmers have the option to continue farming-related activities until rail construction has been approved and the land is needed for construction."

⁵ Official launch of Canada's Key Biodiversity Areas: <https://view.publitas.com/birds-canada-gykhaz9yrrpp/media-release-official-launch-of-kbas-in-canada/page/1>

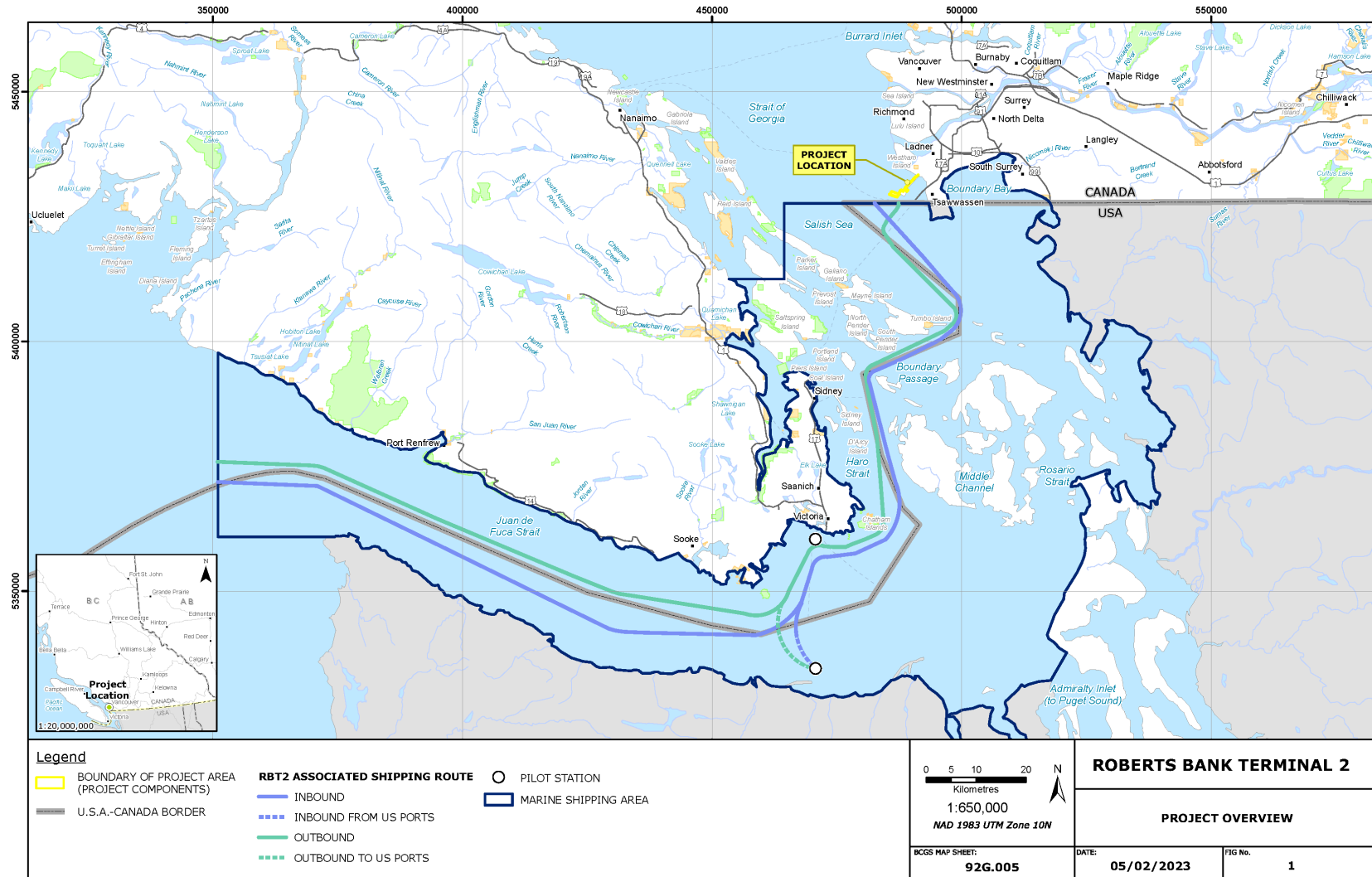


Figure 1: Roberts Bank Terminal 2 Project Overview (VFPA 2023)

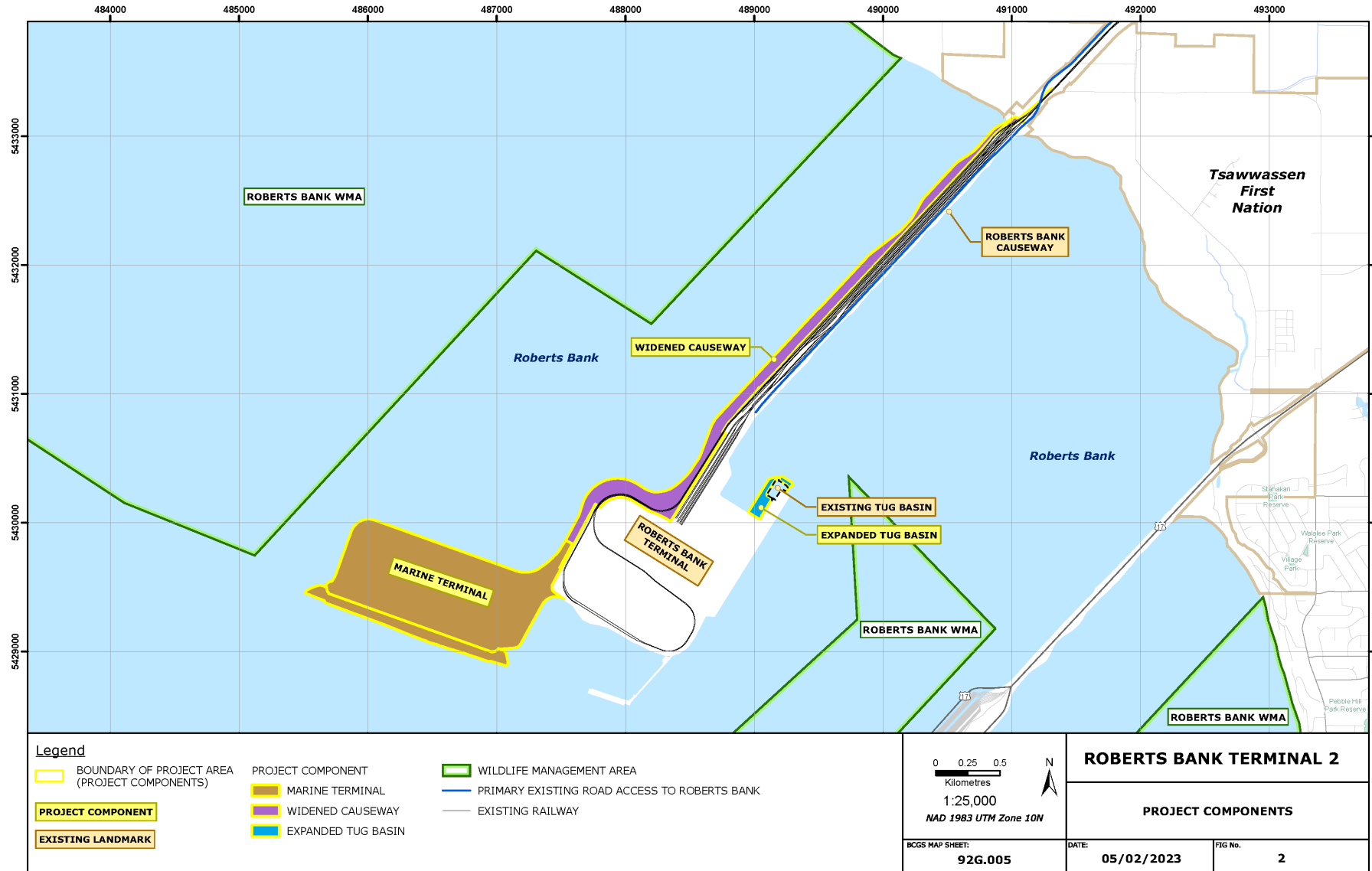


Figure 2: Roberts Bank Terminal 2 Project Components (VFPA 2023)




| | | |
|--|---|---|
| |  | <p>ROBERTS BANK TERMINAL 2</p> <p>ROBERTS BANK TERMINAL 2 PROJECT ORIENTATION AND LAYOUT</p> <p>DATE: 01/05/2015 FIG No. 1-2</p> |
|--|---|---|

Figure 3: Roberts Bank Terminal 2 Project Orientation and Layout (VFPA 2015)

Marine Shipping

The *Constitution Act, 1867* grants the federal government exclusive jurisdiction over navigation and shipping. The *Canada Shipping Act, 2001* is the principal statute that governs safety in marine transportation and protects the marine environment in Canada. This legislation gives Transport Canada (TC) its authority over marine shipping.

TC works with other federal departments and agencies to carry out the mandate and responsibilities over marine shipping, including the Canadian Coast Guard, the Pacific Pilotage Authority, DFO, and ECCC. VFPA has navigational jurisdiction over both federal and provincial marine areas within the VFPA's navigational jurisdiction boundary.⁶

In April 2015, the Environmental Impact Statement (EIS) Guidelines for RBT2 were updated by the Agency to require the consideration of marine shipping outside the VFPA's jurisdiction (beyond the VFPA's care and control) to the 12 nautical mile limit of the Canadian territorial sea. The VFPA responded to the updated EIS Guidelines by issuing the [Marine Shipping Addendum](#) which includes an assessment of potential effects resulting from marine shipping associated with RBT2. The RBT2 MSA is the area in which potential changes to the physical, biophysical, and human environment were assessed; to facilitate the effects assessment of marine shipping associated with RBT2, the VFPA divided the MSA into seven Segments, A to G⁷. Figure 1 shows the inbound and outbound shipping routes for RBT2, where marine pilots are located, and includes areas where RBT2 vessels may seek anchorage (such as, if inclement weather makes berthing unsafe at Roberts Bank).

Based on shipping traffic forecasts in the VFPA's Marine Shipping Addendum submitted in 2015, the Panel assessed marine shipping incidental to RBT2 on the basis that RBT2 would result in 260 additional container ships transiting the MSA on an annual basis, or 1.5 vessel movements per day. During the Panel process the VFPA updated its predictions for vessel transit associated with RBT2 based on a *2018 Mercator Report* that stated the total number of container ships transiting in the MSA as a result of RBT2 was no longer predicted to increase due to forecasted increases in ship size and capacity. The Panel recognized that a number of participants were concerned with the VFPA's conclusion that RBT2 would not increase shipping traffic. The Panel found that the initial forecast in the Marine Shipping Addendum, which predicted an increase in vessel traffic from RBT2, provided a realistic and conservative assessment of the potential effects of marine shipping associated with RBT2.

Subsequently, after the receipt of the Panel's report, the federal Minister of ECCC requested additional information on August 25, 2020, including an update and more detailed container vessel traffic forecast.

⁶ [VFPA's jurisdictional map](#) shows the VFPA's navigational jurisdictional boundary and VFPA-federally managed lands and waters.

⁷ See VFPA's Marine Shipping Addendum and Panel Report's figure 5-1.

The VFPA provided the [IR2020-3-B Updated Roberts Bank Terminal 2 container vessel call forecast study](#),⁸ which indicated that, in the most realistic scenario, the number of container vessels calling at the Port would remain the same with or without the operation of RBT2. TC reviewed this study and found that it was well-constructed and plausible, but that given the complexity of the factors being considered, there was inherent uncertainty in forecasting vessel traffic (see [TC's comments](#)).

The EAO understands that regardless of whether there is or is not an increase in vessel traffic from RBT2, the VFPA and TC do not have care and control over a variety of factors that can adversely affect the efficient flow of goods through the Port and contribute to marine vessel congestion in the Salish Sea.

3.0 STRATEGIC CONTEXT

This section outlines general factors that are important for understanding the context in which the RBT2 EA takes place.

Cumulative Effects

Concerns have been raised that significant adverse cumulative effects are occurring to many Valued Components in the lower Fraser River, Fraser River Estuary, and Salish Sea from past and present activities. Indigenous nations have reported that this is limiting their ability to adequately exercise rights and interests in these areas, and aspirations to advance stewardship. There have been requests for the federal and provincial governments to conduct regional EAs and develop long-term environmental management plans for the lower Fraser River, the Fraser River Estuary and the Salish Sea, to guide conservation efforts and sustainable development.

On June 29, 2021, the B.C. Supreme Court issued its decision under *Yahey v. British Columbia*, 2021 BCSC 1287, where the cumulative effects of industrial development authorized by the Province of B.C. in Blueberry River First Nations Treaty territory was found to have significantly diminished the ability of Blueberry River First Nation members to exercise their rights and therefore constitutes an infringement of their Treaty rights. Although the decision is specific to Blueberry River First Nations Treaty territory, it advances the consideration of cumulative effects and the meaningful exercise of Indigenous rights.

The EAO acknowledges the challenges that project-by-project EAs pose in the context of existing adverse cumulative effects in the Lower Mainland region, and the work ahead to support reconciliation and the ability of Indigenous nations to exercise rights and stewardship aspirations. There are currently six major projects proposed in the Lower Mainland: RBT2, Tilbury Marine Jetty, Tilbury LNG Phase 2, Deltaport Berth 4, Delta Grinding Facility, and the Fraser River Tunnel Project. This list does not include the other

⁸ VFPA's response to the federal Minister of ECCC's Information Request can be found at <https://www.iaac-aeic.gc.ca/050/evaluations/document/142382>

development activities in the region not subject to a federal or provincial EA process.

United Nations Declaration on the Rights of Indigenous Peoples

The EAO transitioned to the *Environmental Assessment Act*, 2018 (the Act). The Act establishes the purpose of the EAO, including to support reconciliation with Indigenous peoples by supporting the implementation of the United Nations Declaration on the Rights of Indigenous Peoples. In October 2019, the Province of B.C. became the first jurisdiction in Canada to enact the *Declaration on the Rights of Indigenous Peoples Act*, SBC 2019, c 44 (the Declaration Act) establishing a collaborative path towards achieving deep and meaningful reconciliation with Indigenous peoples. The Declaration Act builds off of the Province of B.C.'s [Draft Principles that Guide the Province of British Columbia's Relationship with Indigenous Peoples](#) (2017). Although RBT2 EA was carried out under a previous Act (B.C.'s *Environmental Assessment Act*, 2002), the EAO's approach to the RBT2 EA has been guided by the Act and the Declaration Act.

4.0 ENVIRONMENTAL ASSESSMENT PROCESS

Milestones of the federal and provincial EA process are summarized in [Appendix 1](#) of this Report.

4.1 FEDERAL EA PROCESS

RBT2 required an EA under CEAA 2012 as it involves the construction of a marine terminal designed to handle vessels larger than 25,000 deadweight tonnes.

In November 2013, the Agency issued draft EIS Guidelines outlining the information required for the preparation of an EIS to assess RBT2 pursuant to CEAA 2012. On January 7, 2014, the final [EIS Guidelines](#) were issued to the VFPA and made available to the public, and the federal EA of RBT2 was referred to the Panel. After public consultation, the Minister of ECCC issued the [Panel Terms of Reference](#) (original version 2015, amended version 2019). In April 2015, the Agency issued the [Updated EIS Guidelines](#) for RBT2 to include potential environmental effects from marine shipping activities within the 12 nautical mile limit of Canada's territorial sea, and potential provincial social, economic, heritage and health effects. The Agency issued [Updated EIS Guidelines](#) again in April 2019 to clarify how incidental marine shipping activities would be considered.

The EIS Guidelines state in section 3.1 the scope of the project for the purpose of the EA is to include marine, road and rail transportation within the areas for which the VFPA has jurisdiction. The EIS Guidelines state in section 3.2 the scope of the assessment should include the effects of project components and activities on the environment, including those that may extend beyond the scope of the project. The *Canada Marine Act* gives port authorities the authority to take, or prevent, certain activities within a "port". A port is defined as "the navigable waters under the jurisdiction of a port authority and the real property and immovables that the port authority manages, holds or occupies as set out in their letters patent."

In a letter dated April 29, 2015, the VFPA advised the Agency that the [EIS it submitted on March 27, 2015](#) was intended to meet both federal and provincial EA requirements.

Panel Process

Occurring from 2016 – 2020, the Panel process⁹ included:

- Reviewing the VFPA’s EIS and completing sufficiency reviews and public comment periods;
- Panel orientation sessions;
- A public hearing (consisting of 24 hearing days held in various locations); and,
- Closing remarks.

The Panel held its public hearing on RBT2 from May 14 to June 24, 2019. This provided opportunity for the VFPA to present RBT2 and its assessment of potential effects, and registered participants to share information and ask questions of the VFPA and other registered participants.

On March 27, 2020, the [Panel Report](#) was submitted to the federal Minister of ECCC, and it was released on April 3, 2020. The Panel Report outlined 86 conclusions and 71 recommendations as a result of their assessment. The Review Panel concluded significant adverse project specific or cumulative effects in approximately 30 areas.

Post Panel Process

Following the release of the Panel Report, on April 3, 2020, the federal Minister of ECCC approved a timeline extension for the federal EA decision on RBT2 recognizing the extenuating circumstances arising from the COVID-19 pandemic.¹⁰

On August 24, 2020, the federal Minister of ECCC issued an [Information Request](#) (IR) requiring the VFPA to provide additional information related to container vessel traffic forecast, fish habitat offsetting, mitigations measures, and effects to SRKW, biofilm and migratory birds, and effects to Indigenous nations in order to inform his decision under CEAA 2012. On this date, the federal EA timeline was paused.

The VFPA submitted their [IR response](#) to the federal government on September 24, 2021. The Panel’s recommendations and the VFPA’s IR response informed the development of federal conditions for RBT2. The Agency commenced a 60-day public comment period on the draft federal conditions and the VFPA’s IR response on December 15, 2021.

After the Panel issued its report, the Agency facilitated discussions among federal and provincial agencies

⁹ For additional information, refer to Section 1 of the [RBT2 Federal Review Panel Report \(2020\)](#).

¹⁰ <https://iaac-aeic.gc.ca/050/evaluations/document/134523>

to identify programs and initiatives through which Panel recommendations outside of the care and control of the VFPA and directed to government might be addressed.

The federal EA timeline resumed in January 2023, following the federal Minister of ECCC determination that the information provided by the VFPA satisfied the IR. On April 20, 2023, the Government of Canada approved RBT2 subject to 370 federal conditions in the [Decision Statement](#). As part of the Decision Statement, the federal Minister of ECCC acknowledged that RBT2 is likely to cause significant adverse environmental effects and noted that the matter was referred to the Governor in Council. The Government in Council decided that the significant adverse environmental effects that RBT2 is likely to cause are justified in the circumstances.

4.2 PROVINCIAL EA PROCESS

RBT2 is a reviewable project and requires a provincial EA under the Act pursuant to Part 8 of the [Reviewable Projects Regulation](#), as the new marine port facility would involve dredging and filling more than two ha of submerged land.

On November 5, 2014, the EAO issued an Order pursuant to Section 10(1)(a) of the Act referring RBT2 to the B.C. Minister of ENV for a determination of the scope, procedures, and methods of the EA under Section 14 of the Act. On December 19, 2014, the B.C. Minister of ENV issued the [Section 14 Order](#) for conducting the RBT2 EA. The Minister ordered that:

- The scope of the project is defined by the Agency in the EIS Guidelines;
- The scope of the assessment must include factors established by the federal Minister and potential adverse environmental, economic, social, heritage and health effects, including cumulative effects, and practicable means to mitigate such potential adverse effects, and potential adverse effects on Indigenous nations;
- The B.C. EA will rely principally on the Panel EA for the information needed for the assessment, including consultation conducted by the Agency with Indigenous nations. Subject to subsections 45(3), (4) and (5) of CEAA 2012, all information received by the Panel is available to the Province of B.C.;
- The EAO may require additional information from the VFPA to complete its assessment for the provincial EA; and,
- The EAO will consider in the assessment relevant information created by the Gateway Transportation Collaboration Forum (GTCF) (see section [5.0](#) of this Report).

On July 25, 2019, the B.C. Minister of ENV issued a Section 15 Order to amend the Section 14 Order based on the updated federal RBT2 EIS Guidelines issued by the Agency to include potential environmental effects from marine shipping, and potential provincial social, economic, heritage and health effects.

Given the advanced stage of the RBT2 federal EA, on November 8, 2022, the Chief Executive Assessment Officer of the EAO ordered that the provincial EA was to continue under the Act and not transition to the *Environmental Assessment Act, 2018*, and extended the time limit for completing it to December 2023.

Within the scope of the EA, RBT2 construction and operations activities will occur on federal lands, or where activities are federally regulated such as those involving marine shipping. Even though activities will occur on federal lands or are federally regulated, adverse effects would and could occur where there are Provincial Interests, and various provincial permits and authorizations will be required. Provincial legislation relevant to RBT2 is provided in [Appendix 6-A](#) of the Environmental Impact Statement (VFPA 2015).

Provincial Review Team

The EAO established a Provincial Review Team (PRT) made up of provincial and local government staff with mandates and expertise relevant to the review of RBT2. Indigenous nations participated in the EA through the Panel process and were not participants on the PRT. The members of the PRT included:

1. Local governments – Delta; City of Richmond; and Metro Vancouver. The City of Vancouver and City of Langley chose to not participate on the PRT but did provide comments.
2. Provincial government – Ministry of Agriculture and Food; Ministry of Emergency Management and Climate Readiness; Ministry of ENV; Ministry of Health, and the Fraser Health Authority; Ministry of Indigenous Relations and Reconciliation; Ministry of Jobs, Economic Development and Innovation; MOTI; Ministry of Municipal Affairs; and Ministry of Water, Land and Resource Stewardship (WLRS).

The EAO sought and considered advice from the PRT to understand and assess potential adverse effects to Provincial Interests from RBT2. The PRT:

1. Participated in the Panel process, which included reviewing the VFPA's EIS, identifying whether the information in the EIS was sufficient, submitting information and/or presentations to the Panel, and identifying whether the VFPA's responses to information requests were sufficient.
2. Provided technical advice to the EAO, which included identifying outstanding gaps and concerns, and reviewing the Panel Report, the conditions proposed by the EAO for a provincial EA Certificate, and this Report.

5.0 KEY CONCLUSIONS OF THE ENVIRONMENTAL ASSESSMENT

The EAO has summarized the findings of the Panel and the views of federal agencies within the [Whole of Government Response](#) as they related to Provincial Interests. The EAO has also summarized the potential adverse effects from RBT2 to Provincial Interests and has identified provincial and federal conditions proposed to mitigate these effects. The benefits or positive effects of RBT2 are discussed below in [section 10](#) of this Report.

The Whole of Government Response identifies various Government of Canada initiatives that are relevant in the context of RBT2. Initiatives, such as the Oceans Protection Plan, the Whales Initiative, and the Marine Spatial Planning Pacific South Coast Program, are designed to collect habitat and monitoring

information, implement management measures that may assist in mitigating the potential effects of the Project and cumulative effects, and support capacity building by Indigenous nations to undertake studies and stewardship activities in the Salish Sea. However, Indigenous nations have raised concerns about reliance on these initiatives because of the various stages of their implementation, their scope, the duration of funding, their effectiveness has yet to be determined, and the need for coordination between them. The EAO acknowledges the concerns that Indigenous nations have raised.

The responses from provincial agencies in the Whole of Government Response include the following:

- WLRS would support Parks Canada's efforts to monitor and protect shoreline/foreshore archaeological sites on Parks Canada lands in the MSA from erosion associated with vessel traffic. This would include providing access to and analysis of provincial archaeological site data. WLRS would provide data about physical and cultural heritage sites to federal agencies responding to oil spills;
- Ministry of ENV will continue to collaborate with federal agencies on the handling of hazardous materials and spill management in the terrestrial environment, and spill notification and response in the marine environment.

In determining whether to recommend provincial conditions, the EAO considered the following:

1. The federal and provincial programs and initiatives planned or underway related to potentially addressing the effects of the Project in the project and regional assessment area (RAA);
2. The federal conditions in the [Decision Statement](#);
3. The scope of the EA and views, conclusions or recommendations from the Panel report; and
4. Effects of the project on matters of Provincial Interests and within the Ministers' jurisdiction to issue provincial conditions.

5.1 FINDINGS OF THE ENVIRONMENTAL ASSESSMENT

The Panel found that RBT2 would result in numerous adverse residual¹¹ environmental, economic, social, cultural and health effects, and cumulative effects, where there is overlap with Provincial Interests. A list of the Panel's conclusions and recommendations can be found in [Appendix H](#) of the Panel Report. The VFPA's commitments, proposed mitigation, and follow-up programs can be found in [Appendix G](#) of the Panel Report and in the VFPA's response to the post-panel ministerial IR.. [Section 5.2](#) of this Report provides more detail on the federal conditions.

¹¹ In making significance determinations, the Panel used the [Agency's guidance](#) for determining if a residual adverse environmental effect was significant. The Panel also took into account additional context of the environmental component when considering the key criteria to better characterize whether adverse effects might be significant. From the Agency's guidance, "a residual environmental effect is an environmental effect of a project that remains, or is predicted to remain, after mitigation measures have been implemented."

Table 1 is a summary of valued components where the Panel found adverse residual and cumulative effects from RBT2 that relate to Provincial Interests.

Table 1: Summary of Panel Findings Relating to Provincial Interests

| Environmental component | Conclusions on residual and cumulative adverse Effects | |
|---|--|-------------------|
| | <i>Project Related (residual)</i> | <i>Cumulative</i> |
| Wetlands | Significant | Significant |
| Salmon - Juvenile Chinook | Significant | Significant |
| Salmon - Juvenile Chum | Not Significant | Not Significant |
| Barn Owl | Not significant | Significant |
| Human Health - Air Quality | Significant | Significant |
| Human Health - Noise Effects | Not significant | Significant |
| Daytime Visual Resources | Significant | Significant |
| Nighttime Visual Resources | Not significant | Significant |
| Outdoor Recreation (terminal area and segments of the MSA) | Inconclusive on significance* | Significant |
| Agricultural Land Use | Not significant | Significant |
| Accidents and Malfunctions (spills affecting the marine environment) | Significant** | |
| Greenhouse Gas Emission - Metro Vancouver area | | Significant*** |

Notes:

Panel’s conclusions if both the Panel’s proposed recommendations and the VFPA’s mitigation measures are applied.

*The Panel concluded that the “Project would result in a residual adverse effect on outdoor recreation. The Panel is unable to determine the significance of the effect.”

**The Panel concluded that it “could be significant for vulnerable species such as the Southern Resident Killer Whale and marine birds, marine commercial and recreational activities, current use, cultural heritage and health of Indigenous groups. The Panel does not conclude on cumulative effects.”

***The Panel did not refer to a significance determination for the residual effect of the project. The Panel stated that the “Project would contribute a very small amount of greenhouse gas (GHG) emissions relative to regional, provincial, and national sources. The Panel considers the contribution of GHG emissions from the Project will be ongoing and will contribute to the accumulation of GHG in the atmosphere and the oceans and is effectively perpetual.”

In addition to the environmental components in Table 1 above, the Panel also commented on potential adverse effects from RBT2 road and rail traffic and cumulative adverse effects relating to the Fraser River Estuary and the Salish Sea, as described below.

5.1.1 WETLANDS

RBT2 has the potential to adversely affect provincially-listed communities of marine vegetation given that the physical footprint of the Project will overlap those communities. Further, the Panel found that there is uncertainty in the effectiveness of the intertidal marsh offsets for at-risk communities.

The Panel concluded that effects on wetlands and wetland functions would not be fully mitigated, and that the Project would result in a significant adverse effect. The Panel found that significant cumulative effects are already present in the Fraser River estuary and that effects of RBT2 would contribute to wetland losses and degradation regionally.

Federal conditions are intended to mitigate adverse effects to wetlands that occur as a result of the construction and placement of the marine terminal. These measures include consulting with the Ministry of ENV and Indigenous nations, and monitoring the effects of RBT2 on intertidal marsh communities for the first 10 years of the operation of the project, and compensating for residual adverse effects observed during that time.

The EAO considered the concerns raised during the EA by the PRT and Indigenous nations, and the determination that RBT2 would result in a significant cumulative effect on wetlands and wetland function in the lower Fraser River estuary, including provincially red-listed marsh communities. To address this determination, the EAO is proposing the following conditions, in addition to the federal Mitigation Measures related to wetlands:

- Condition 9: Indigenous Monitoring Plan, including opportunities for Indigenous nations to participate in monitoring activities related to wetlands;
- Condition 12: Public Information, a community feedback process requiring the VFPA to develop a mechanism for members of the community to submit questions and concerns about RBT2, including comments related to wetlands, and to respond to concerns raised; and,
- Condition 16: Vegetation, Wildlife, Wetlands and Harvesting Management Plan, which would require the VFPA to address adverse effects to wetlands and wetland functions from RBT2 construction.

5.1.2 SALMON

The Panel noted that effects on juvenile chum and Chinook salmon due to light and underwater noise would not be fully mitigated. The Panel concluded that RBT2 would have an adverse residual effect on juvenile Chinook salmon due to migration disruption, coupled with minor adverse effects in the acoustic and light environments during construction and operations. This effect would be high in magnitude, local in extent, permanent in duration and irreversible.

Federal conditions are intended to mitigate adverse effects to fish and fish habitat that occur as a result of the construction, placement, and operation of the RBT2 marine terminal. These measures include

consulting with Indigenous nations, measures to mitigate adverse effects caused by lighting, noise, and disruption to juvenile salmon, developing any offsetting measures to compensate for residual adverse effects to fish and fish habitat, and developing a follow-up program to determine the effectiveness of those measures.

The EAO is satisfied that the federal conditions will address residual adverse effects to juvenile Chinook salmon. As such, the EAO has not proposed any related provincial conditions.

5.1.3 WHITE STURGEON

The Panel concluded that it is unlikely that RBT2 would cause an adverse effect on sturgeon due to the small overlap of RBT2 with the distribution of sturgeon.

The Panel Report stated concerns from participants including Musqueam Indian Band and Tsawwassen First Nation regarding RBT2 effects on sturgeon. As a provincially managed species, WLRS presented evidence that sturgeon migration overlaps with the RBT2 area. Recent monitoring data and traditional knowledge indicated that sturgeon used the estuary as an important feeding habitat prior to and after the breeding season. WLRS recommended that additional information be collected by the VFPA to appropriately reduce the risk to sturgeon in the Fraser River estuary, and recommended conditions pertaining to monitoring methodology, research funding, consultation, and data sharing with the WLRS, Indigenous groups, and the DFO” ([Panel Report](#), page 186).

Federal conditions are intended to mitigate adverse effects to fish and fish habitat from the construction, placement, and operation of the RBT2 marine terminal. These conditions include specific measures during construction dredging activities on eulachon (a forage fish species). In its IR response, the VFPA reported its commitment to funding \$500k to support advancement of Musqueam/Tsawwassen First Nation led research and priority initiatives for eulachon.

The EAO is satisfied that the federal conditions and VFPA’s commitments will address potential adverse effects to white sturgeon, and has not proposed any related provincial conditions.

5.1.4 BARN OWL

The agricultural areas in southwest Delta have some of the highest densities of barn owl in Canada. Barn owls are listed as threatened under SARA and face ongoing loss of foraging, nesting, and roosting habitats from urban and industrial development of agricultural lands, and decay and demolition of wooden barns and outbuildings.

Vehicle collisions are the leading cause of mortality for barn owl in the lower mainland. The projected future increases in the human population in the Lower Fraser Valley and general increases in urbanization would increase traffic volume and density in the RAA, thus increasing barn owl mortality due to vehicle collision. The noted increase in vehicle traffic from RBT2 would add to existing traffic.

The Panel concluded that the effect on the barn owl would not be significant if both the Panel's proposed recommendations and the Proponent's mitigation measures are applied. The Panel also concluded that increases in vehicle traffic due to RBT2 in combination with existing traffic and projected increases in human population and urbanization would result in a significant adverse cumulative effect on the barn owl population in the regional area.

Federal conditions will require the VFPA to mitigate adverse effects to barn owls. Measures include identifying locations and installing physical barrier(s) within either the local and/or regional assessment areas to mitigate road-associated mortality risk for barn owls, installing at least five artificial nest structures within the regional assessment area to enhance barn owl productivity, and participating in regional initiatives to establish and maintain barn owl foraging habitat close to existing or newly installed barn owl nest sites. The federal conditions also include requirements to monitor the effectiveness of the mitigation measures through follow-up programs.

The EAO is satisfied that the federal conditions will address residual adverse effects to barn owl, and has not proposed any related provincial conditions.

5.1.5 HUMAN HEALTH – AIR QUALITY

During the construction and operations phases of RBT2, adverse effects to human health would occur associated with air quality changes based on predicted 1-hour exposures to nitrogen dioxide (NO₂). The effects would impact individuals located in immediate upland areas of approximately 80 kilometres squared (km²) in western Delta, Tsawwassen First Nation Lands, Tsawwassen community, and Point Roberts who would be exposed where they work, live and play. There are at least 43 sensitive receptors that would be exposed to these levels of NO₂ and potentially experience these health effects. The Panel concluded the human health effects associated with exposure to annual-average NO₂ and respiratory irritants during construction would be significant because, although exposure would be intermittent, infrequent, localized to the RBT2 area and reversible for some, it would be chronic for others, making the effect high in magnitude.

Federal conditions are intended to mitigate adverse effects to air quality from RBT2, which includes consultation with the Ministry of ENV, local governments, and Indigenous nations. In addition to the measures noted under greenhouse gas (GHG) emissions below, these include the following:

- Measures to mitigate air emissions during construction and operation;
- A follow-up program to verify the accuracy of the EA and determine the effectiveness of mitigation measures as they pertain to adverse changes to air quality attributable to RBT2 causing adverse effects on human health;
- Collect data or monitor, during construction and operation, common air contaminants and trace organic contaminants at existing air quality monitoring stations operated by Metro Vancouver and

additional air quality monitoring station(s) at locations potentially affected by the construction and operation of RBT2; and,

For any exceedances of the most stringent applicable air quality criteria set out in the *Canadian Ambient Air Quality Standards* or *British Columbia Air Quality Objectives* determined to be attributable to RBT2, develop and implement modified or additional measures to mitigate air quality emissions.

The EAO notes that the federal condition to mitigate adverse effects to air quality from RBT2 would not apply to the operations of railways (CN, CP and BNSF). While the VFPA has the ability to apply emission reduction measures to trucks that would service RBT2 (such as, transport containers) through contractual arrangements, it does not have this ability with respect to vessels that would call at the terminal.

The EAO is satisfied that the federal conditions will address potential adverse effects to air quality from RBT2 and has not proposed any related provincial conditions.

5.1.6 HUMAN HEALTH – NOISE

The health of individuals would be affected by continuous nighttime noise and low frequency noise from RBT2. The VFPA has acknowledged that exceedances of noise thresholds are occurring across a large portion of the assessment area, and the VFPA's noise modelling indicates there would be additional noise from RBT2. The Panel concluded that cumulative health effects due to noise from RBT2 would be high in magnitude since RBT2 would be adding to an already severely degraded environment with exceedances of several different human health thresholds across a large portion of the assessment area, and the effects would be irreversible during operations, long-term in duration and continuous.

Federal conditions are intended to mitigate adverse effects caused by noise and vibration from RBT2, which includes consultation with Delta and Indigenous nations. These measures include the following for RBT2 construction and operation:

- Measures to mitigate noise and vibration during construction and operation
- A follow-up program to verify the accuracy of the EA and determine the effectiveness of mitigation measures as they pertain to adverse effects on human health;
- Monitoring sound levels during construction and the first two years of operation at two Tsawwassen First Nation locations, to be determined in consultation with Tsawwassen First Nation;
- Developing and implementing additional mitigation measures if the results of monitoring demonstrate that noise levels at any receptor location are higher than was predicted during the EA; and/or are above relevant human health thresholds,
- A protocol for receiving noise complaints attributable to RBT2.

The EAO has proposed the Conditions 10 and 11, Construction and Operation Environmental Management Plans, that would require the VFPA to mitigate adverse effects from noise and vibration. As with air and GHG emissions, the federal and proposed provincial conditions to mitigate adverse effects caused by noise

and vibration from RBT2, would not apply to the operations of railways (CN, CP and BNSF) within the federally and provincially designated RBT2 footprints, or to vessels calling at the terminal.

5.1.7 VISUAL RESOURCES

RBT2 infrastructure, such as the ship-to-shore gantry cranes and nighttime lighting, and vessel presence and movement, have the potential to change the quality of local and regional viewsapes. At specific points of reference, the magnitude of effects to cultural and residential receptors would be high given the duration of the viewing event is long-term. The Panel concluded that RBT2 would result in a significant adverse cumulative effect on daytime and nighttime visual resources.

A federal condition will require VFPA to paint the cranes at the terminal in colours that reduce contrast and enhance blending with the surrounding landscape, subject to safety and regulatory requirements. Federal conditions are intended to mitigate adverse effects caused by lighting emitted from RBT2, which includes consultation with Delta and Indigenous nations. These measures would apply to the lighting associated with fixed physical infrastructure (that is, would exclude mobile sources such as vessels, etcetera.), and include the following:

- Measures to mitigate adverse effects caused by light during construction and operation
- A follow-up program to verify the accuracy of the EA and determine the effectiveness of the mitigation measures; and,
- Monitoring of light trespass and sky glow at identified receptor points, and implement modified or additional mitigation measures if monitoring results demonstrate that additional or modified measures are required to mitigate light attributable to the project.

The EAO has proposed the Conditions 10 and 11, Construction and Operation Environmental Management Plans, that would require the VFPA to mitigate adverse effects from nighttime lighting. As with the federal conditions, the light management plan would apply to the fixed physical infrastructure of RBT2.

5.1.8 OUTDOOR RECREATION

The Panel concluded overall that there would be a residual adverse effect from RBT2 on outdoor recreation due to:

- A loss of a high productivity crabbing area due to the terminal footprint and the expansion of the navigational closure areas;
- A degradation of the quality of experience encountered on the walking trails in the LAA related to visual effects and exceedances of air quality standards in parks and along the coast for people doing land-based outdoor recreational activities; and,
- An increase in the size of the no-hunting zones related to restrictions on firearms use.

The effects would be continuous, long-term and of moderate magnitude. Due to the many variables

affecting outdoor recreation, such as the level of displacement RBT2 would cause, the Panel could not conclude on the significance of effects.

Federal conditions are intended to mitigate adverse effects on access to recreational crab fisheries, visual resources, and air quality. Federal conditions established for RBT2 construction and operation will also require the VFPA, in consultation with Indigenous nations and recreational marine users, to:

- Implement a communications plan to provide up-to-date information about RBT2 activities that may adversely affect access within the LAA for land and water use; and,
- Implement procedures for Indigenous nations and other marine users to provide feedback on adverse effects related to marine use, and the VFPA to respond in a timely manner to feedback and demonstrate how it has been addressed.

The EAO has proposed Condition 12 Public Information, a standard condition that would require the VFPA to communicate information about RBT2 activities to the public via a website or other online medium, how to submit questions and concerns to the VFPA, and how the VFPA would respond to the feedback it receives. Conditions 10 and 11, Construction and Operation Environmental Management Plans, have been proposed to require the VFPA to mitigate adverse effects from nighttime lighting and noise and vibration.

In its EIS the VFPA reported that in the spirit of its long-standing commitment to supporting communities, local governments and the public were consulted about lasting economic and social legacy benefits that would be provided to communities and the region as part of RBT2. The feedback received indicated that community legacy benefits may include the development of transportation infrastructure and recreational facilities (such as walking trails and bike paths), a pedestrian overpass to connect a trail, and environmental initiatives. The VFPA reported that community legacy benefits would continue to be the subject of discussions with local governments, Indigenous nations and the public throughout the development of RBT2. Federal conditions do not require the VFPA to provide community legacy benefits.

5.1.9 AGRICULTURAL LAND USE

While RBT2 would remove 0.08 ha of agricultural land in the LAA, this land is part of the Agricultural Land Reserve (ALR) and is protected for agricultural use under the provincial *Agricultural Land Commission Act*. The Panel concluded that due to the small portion being removed, the effect would not be significant but there would be a residual effect from RBT2. In combination with past and future projects, RBT2 would result in a cumulative effect that would be significant due to the ongoing loss to the ALR from industrialization and urbanization in the LAA.

Further, the Panel heard that industrial land is limited within Delta and that agricultural land is under considerable pressure from industry, including port related industry. While agricultural uses may have coexisted with existing Roberts Bank terminals since their construction, the availability of agricultural land has diminished over the years. The Panel considers that additional mitigation measures beyond the Port

Authority's commitments are needed, concerning the unused land portion acquired for RBT2 and adjacent farms.

Federal conditions have been established to:

- Try to use some VFPA lands not required for RBT2 to support agricultural use; and,
- Require VFPA participation in any regional initiative related to the prevention, monitoring and compensation of any adverse environmental effect attributable to RBT2 on ALR properties located adjacent to RBT2.

The EAO has not proposed a condition on the VFPA to address residual and cumulative adverse effects to agricultural land from RBT2 as federal conditions already require the VFPA to explore land use options related to or in support of agriculture for Lot 3, directly adjacent to the ALR, to offset the non-significant residual impacts.

5.1.10 GREENHOUSE GAS EMISSIONS

RBT2 would contribute a 140,000 tons per year (t/y) of GHG emissions from terminal operations and 129,000 t/y from shipping related to the project, relative to regional (24,000,000 t/y), provincial (75,000,000 t/y) and national (742,000,000t/y) sources. Many of the GHG emissions reduction measures proposed by the VFPA are driven by external regulatory factors, such as fuel quality and engine emission standards. Further, some of the initiatives proposed by the VFPA are voluntary, such as the use of shore power. While the proposed mitigation measures have the potential to be moderately effective, they could be much more effective if they were mandatory and if there was a plan in place to monitor the effectiveness of the mitigation measures.

Metro Vancouver advised the Panel that its Integrated Greenhouse Gas and Air Quality Management Plan has targets for GHG emissions in the region. The Clean Air Plan 2021 includes targets for 2050, with interim points along the way. The Clean Air Plan's overall targets carbon neutral region by 2050 and a 45 percent reduction in greenhouse gas emissions below 2010 levels by 2030. To achieve either of these goals would require GHG emission reductions across all sectors in the region, including RBT2.

The Panel noted the contribution of GHG emissions from RBT2 would be ongoing and would contribute to the accumulation of GHG in the atmosphere and the oceans and is effectively perpetual. As such, the Panel concluded that the construction and operations of RBT2 would contribute to additional GHG emissions in the Metro Vancouver area even after the application of mitigation measures, resulting in a significant adverse cumulative effect.

Federal conditions are intended to reduce GHG emissions from RBT2, which include consultation with the Ministry of ENV. However, the federal conditions do not include provincial GHG targets and is not enforceable by the province. These Federal measures include the following for RBT2 operation:

- A greenhouse gas management plan to improve energy efficiency and reduce greenhouse gases.

- A greenhouse gas follow-up plan, to verify the effectiveness of greenhouse gas reduction measures.
- Providing electrical power connections for all container vessels equipped to plug into land-based electrical power while berthed at the marine terminal to reduce the use of diesel powered auxiliary engines;
- Requiring all cargo handling equipment to be zero-emitting through the use of electric, hydrogen fuel cell or other technology (except for horizontal transport equipment); and,
- Providing incentive to third-party contractors to use zero-emission mobile and stationary off-road equipment for any physical activity undertaken.

The EAO has proposed the Condition 17: Greenhouse Gas Reduction Plan, that would require the VFPA to address these emissions from RBT2 in alignment with other projects with a shipping component that have received an environmental certificate from the Province. The plan includes consideration of emission reduction targets and schedules as set out in relevant Provincial statutes and policies; how the proponent would achieve net-zero GHG emissions by 2050; and an estimation of projected annual direct GHG emissions, total direct GHG emissions for Operations and total direct GHG emissions over the Project's lifetime (which must be equal to or lower than the estimates provided in the EIS).

The federal and proposed provincial conditions to reduce GHG emissions would not apply to the operations of railways (CN, CP and BNSF) within the federally and provincially designated footprints of RBT2. While the VFPA has the ability to apply emission reduction measures to trucks that would service RBT2 (such as transport containers), it does not have this ability with respect to vessels that would call at the terminal.

5.1.11 FRASER RIVER ESTUARY AND SALISH SEA

During the RBT2 EA, several Indigenous nations and other participants expressed concerns that RBT2 would further contribute to existing significant adverse cumulative effects that are already occurring in the Fraser River estuary and Salish Sea from past and present activities. Requests were also made for the federal and provincial governments to conduct regional environmental assessments and develop long-term environmental management plans for the Fraser River estuary and Salish Sea to guide conservation efforts and sustainable development.

Of the Panel's 71 recommendations for RBT2, 22 were related to the Fraser River estuary and Salish Sea that were not directed at the VFPA because they involve actions outside of the VFPA's jurisdiction, yet they would avoid or mitigate the environmental effects of RBT2. These 22 recommendations were directed at the Government of Canada or federal agencies (one of the 22 was directed at both a federal agency and a provincial agency regarding archaeological data). Federal and provincial responses to the recommendations were compiled by the Agency in to a "Whole of Government Response to the Review Panel Recommendations for the Proposed RBT2 Project" (the [Whole of Government Response](#)). Federal agencies (TC, ECCC, DFO, the Canadian Coast Guard, Natural Resources Canada, and the Agency) provided responses on behalf of Canada.

The Panel found sufficient evidence of past effects and ongoing development to conclude that significant adverse cumulative effects are already occurring in the Fraser River estuary. The Panel recognized that cumulative effects in the Salish Sea from increased RBT2 vessel traffic would need to be addressed. The Panel recommended that the Government of Canada:

1. Develop and implement intergovernmental management programs for the improvement and long-term environmental management of the Fraser River estuary and Salish Sea; and,
2. Undertake regional environmental assessments for the Fraser River estuary and Salish Sea to establish an environmental baseline, identify environmental and cumulative effects of the area, and mitigation and follow-up requirements.

In the Whole of Government Response, the Government of Canada recognized the objectives behind these two recommendations and explained that existing policies, programs and initiatives in place are working to satisfy the intent of these recommendation. In particular, the Agency indicated that it does not believe regional assessments to be the appropriate tool to address these issues at this time. However, the Government of Canada may consider taking stock of existing initiatives in the region which could inform the need for, and potential development of, any future regional initiatives.

[Section 2.0](#) of this Report provides more detail on marine shipping associated with RBT2.

5.1.12 ACCIDENTS AND MALFUNCTIONS

The federal EA examined several types of accident and malfunction scenarios for both land and marine based RBT2 activities.

The VFPA identified that there are about 1,800 hazardous and noxious substances (excluding oil products) that are transported in packaged form in container vessels. The Panel was of the view that consequences have the potential to be severe if spills of hazardous and noxious substances from damaged containers reach the marine environment, particularly for any vulnerable species present during the accident, such as juvenile salmon and migrating shorebirds and harvesters of marine resources. The Panel concluded that additional measures would be required to adequately address effects from accidents and malfunctions that may occur in connection with land-based events. If a worst-case oil spill were to occur in the marine shipping area, it could result in potentially significant adverse residual effects for vulnerable species such as SRKW and marine birds, marine commercial and recreational activities, current use, cultural heritage and health of Indigenous groups.

Findings of the Panel point to gaps and limitations in the federal spill preparedness and response regime whereby RBT2 related accidents and malfunctions during its operation, individually or collectively over time, could result in oil, hazardous and noxious substances, and debris (such as plastic pollutants) being deposited into the marine environment and potential significant residual adverse effects to Provincial Crown foreshore and submerged lands and other Provincial Interests. The EAO acknowledges that the Government of Canada is working to address gaps and limitations in its spill preparedness and response

regime, and that this is a complex undertaking.

Federal conditions require the VFPA to implement a variety of mitigation measures relating to accidents and malfunctions for the construction and operation of RBT2. These plans would require the VFPA to take all reasonable measures to prevent accidents and malfunctions from occurring, and to mitigate adverse effects (measures to prevent “events” from occurring, may not prevent “adverse effects” from occurring, and the need to then mitigate those effects).

As accidents and malfunctions can interact with Provincial Interests, the EAO has proposed the Conditions 10 and 11, Construction and Operation Environmental Management Plans, that would require emergency response and spill prevention, mitigation measures that would be implemented if a spill occurs.

5.1.13 RAIL TRAFFIC

The RBT2 EA did not assess the potential adverse effects of the RBT2 road and rail traffic outside of the footprint of the marine terminal and widened causeway infrastructure. The assessment was focused on the scope of factors established by the federal Minister of ECCC in the terms of reference issued to the Panel. The Panel Report acknowledges rail and road related effects beyond the scope of VFPA’s jurisdiction should be considered.

The VFPA does not have care or control over the rail cars or carriers who move goods by rail to and from and within the terminal. The VFPA have interpreted “care and control” as meaning either “regulatory authority granted by the *Canada Marine Act* or Port Metro Vancouver’s letters patent, or an existing contractual relationship by which Port Metro Vancouver would be able to impose conditions or requirements on the operators of marine, rail or road transportation”. Regulatory authority with respect to federal railway companies rests with Transport Canada, pursuant to the *Canada Transportation Act* and the federal *Railway Safety Act*.

According to the VFPA’s EIS, approximately 65 percent of the import container traffic leaving the terminal and 30 percent of loaded export containers brought to the terminal would be by rail, the remainder would be by truck. There would be four trains per average day, and five trains per peak day, in each direction serving RBT2 (for a total of eight train movements per average day, or 10 train movements per peak day). Train lengths to and from RBT2 are expected to be between 8,000 and 12,000 feet (approximately 2,440 and 3,660 meters) long. The EAO notes that RBT2 would operate 24 hours per day throughout almost 365 days a year.

There are no federal conditions, or provincial conditions on the VFPA that specifically address potential adverse effects of in-land rail traffic.

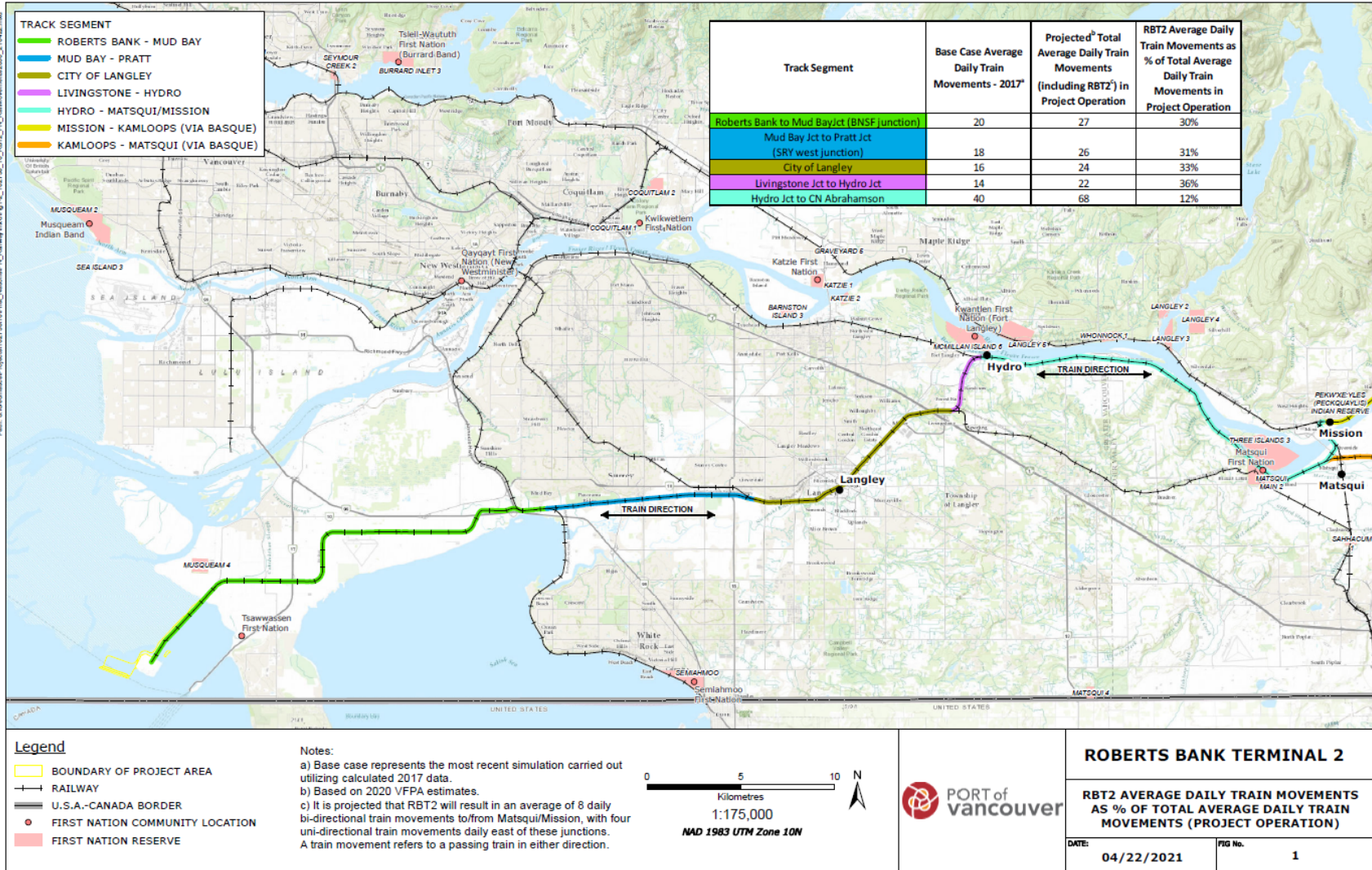


Figure 4: RBT2 Average Daily Train Movements

5.1.14 ROAD TRAFFIC

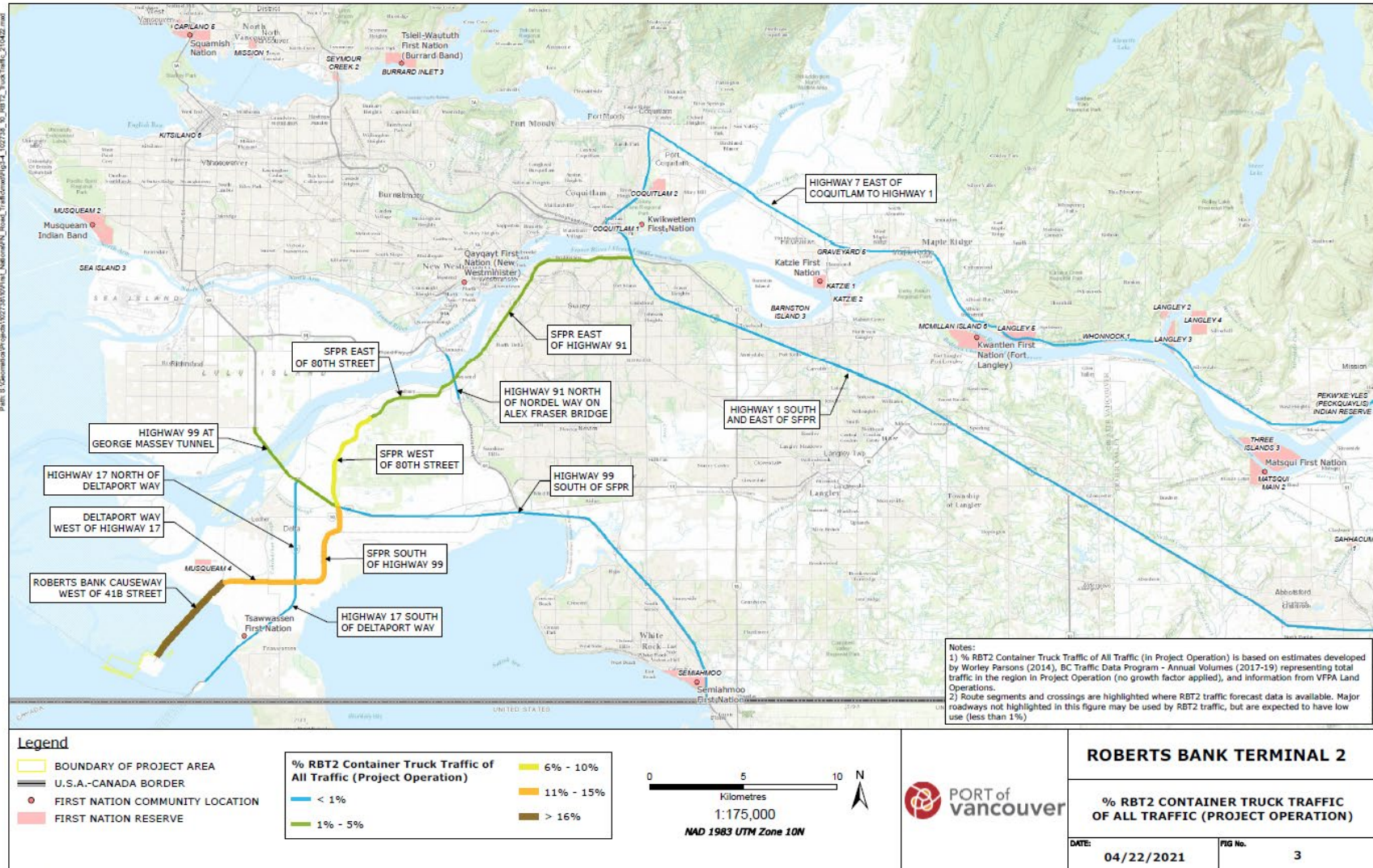
The EA did not consider local road congestion and the accrued inconvenience from rail traffic that RBT2 would generate during its operation. Approximately 70 percent of loaded export containers would arrive at the terminal by truck. Approximately 35 percent of the imported containers and approximately half of the empty containers returned by rail would be moved from the terminal by trucks. On an average day for RBT2, an estimated 3,700 one-way truck trips would occur at the marine terminal, and up to 5,100 truck trips on a peak operating day, based on an assumed five-day week for truck gate operations. The EAO notes that RBT2 would operate 24 hours per day throughout almost 365 days a year, and the data above refers to container movement by truck only and does not include any other type of vehicles and its estimates.

The VFPA facilitated the formation of the GTCF in 2014, to help address road and rail transportation issues associated with port-related trade. The GTCF is chaired by the VFPA, and its participants include TC, MOTI, TransLink, and the Greater Vancouver Gateway Council which manages and promotes trade growth in Metro Vancouver, and the B.C. Marine Terminal Operators Association. The GTCF is not a regulatory or decision-making body and it does not have the ability to impose measures to mitigate adverse effects from road and rail traffic. While a useful collaboration and planning forum, the GTCF may not be able to address public, community, local government, and Indigenous nation issues and concerns involving rail and vehicle traffic. Further information about the GTCF and past, current and planned regional road and rail related initiatives is available in the [VFPA's August 24, 2021, memorandum to the EAO](#).

The Panel was of the view that, if the project were allowed to proceed, the Province of B.C., Delta, and Tsawwassen First Nation will need to collaboratively address local traffic issues, and the proposed improvements to the Highway 99 crossing of the Fraser River should be expedited. There are no federal conditions on the VFPA that specifically address potential adverse effects of in-land road traffic.

In response to this and the views expressed by the Panel, and considering the relevant information created by the GTCF, should RBT2 proceed, MOTI will:

- Rely on the existing agreements between the Province, the VFPA and BC Railway Company that articulate each party's obligations to make coordinated investments in transportation infrastructure and ensuring the necessary upgrades to the Roberts Bank road and rail transportation corridors to support planned growth at Roberts Bank and elsewhere in the gateway. These agreements will serve to ensure:
 - there is sufficient road and rail capacity to accommodate the traffic caused by the delivery and operation of Terminal 2;
 - a safe and efficient provincial public highway system is maintained; and
 - a safe and efficient railway network is maintained.



Esri, HERE, Garmin, (c) OpenStreetMap contributors, and the GIS user community
 Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, Geobase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

Figure 5: RBT2 Container Truck Traffic

5.2 PROVINCIAL AND FEDERAL CONDITIONS

The EAO is responsible for proposing conditions that would become legally binding and subject to compliance and enforcement oversight should the provincial Ministers issue an EA Certificate. In consultation with the PRT and Indigenous nations, and in consideration of input from the public, the EAO has proposed 17 conditions to ensure the residual adverse effects of RBT2 are adequately avoided, minimized or offset, and to ensure that uncertainty would be managed to the extent possible.

The provincial conditions apply to the Project as described in the Provincial Certified Project Description (Schedule A of this Report). Two crucial conditions are Condition 10: Construction Environmental Management Plan and Condition 11: Operations Environmental Management Plan. These two conditions include requirements to develop mitigation measures to address erosion and sediment control; stormwater, wastewater, and waste management; emergency response and spill prevention; noise and vibration management; health and safety management; lighting management; and how Indigenous knowledge and Indigenous use information has been considered.

The federal conditions that would be applied to the VFPA to address potential adverse effects of RBT2 are contained within the [Federal Decision Statement](#). The conditions will not address the recommendations of the Panel that are directed at other federal agencies (TC, ECCC, DFO, the Canadian Coast Guard, and the Agency; as summarized in the Whole of Government Response).

As discussed above, federal conditions to mitigate adverse effects would apply where the VFPA would have care and control (jurisdiction) over the activities of RBT2. The VFPA would not operate container vessels, tugs, trains, or container trucks. During the operation of RBT2, the VFPA:

1. Would not have care and control over CN, CP and BNSF railway operations occurring within the federally designated footprint of RBT2 (such as, regarding the approximately 3.2 km long nine track rail yard on the widened causeway where splitting inbound trains and assembling outbound trains would occur);
2. Would have a degree of care and control over vessels calling at RBT2 within its marine navigational jurisdiction area, and while vessels are berthed at the marine terminal;
3. Would not have care and control over RBT2 truck and/or vehicle traffic after leaving or before entering the federally designated RBT2 footprint at the western (seaward) end of the existing causeway;
4. Would have a degree of care and control over vehicles servicing RBT2 (such as, trucks transporting containers) through contractual relationships; and,
5. Would have care and control over containers (cargo) while being transferred between vessels, railcars and trucks, and stored in yards, and the activities and infrastructure associated with this.

During RBT2 operations, where and how federal conditions (mitigation measures) are applied to matters involving changes to air quality and noise as this relates to human health, visual resources, GHG emissions, and accidents and malfunctions (that is, matters overlapping with Provincial Interests), would be

influenced by the degree to which the VFPA has jurisdiction over activities within the “Designated Project Area” as described in the federal conditions. This includes the footprints of the marine area where vessels would be berthed, the marine terminal, the widened causeway infrastructure, and the expanded tug basin.

6.0 INDIGENOUS CONSULTATION AND ENGAGEMENT

B.C.’s Section 14 Order issued under the Act for RBT2 identified that the EAO would rely on consultation conducted by the Agency with Indigenous nations¹² whose interests could be potentially affected. Throughout the EA, the Agency and the EAO consulted with the following Indigenous nations with traditional territories overlapping the RBT2 terminal (the Designated Project Area) and the MSA. To align with the Agency’s consultation and documentation, Indigenous nations have been arranged in the following groupings to facilitate consultation on the project:

Indigenous nations – Roberts Bank:

- Cowichan Tribes;
- Halalt First Nation;
- Huu-ay-aht First Nations;
- Ka:’yu:’k’t’h’/Che:k’tles7et’h;
- Lyackson First Nation;
- Malahat First Nation;
- Musqueam Indian Band;
- Pauquachin First Nation;
- Penelakut Tribe;
- Semiahmoo First Nation;
- Stz’uminus First Nation;
- Toquaht Nation;
- Ts’uubaa-asatx First Nation;
- Tsartlip First Nation;
- Tsawout First Nation;
- Tsawwassen First Nation;
- Tseycum First Nation;
- Tseil-Waututh Nation;
- Uchucklesaht Tribe; and,
- Yuułu?it?ath First Nations.

¹² The term Indigenous nations is used by the Province of B.C. in alignment with the *Environmental Assessment Act* (2018). Indigenous nations include First Nations and Métis peoples of B.C. In the federal context, the term used is Indigenous groups as in the Panel report and the Consultation and Accommodation Report.

Indigenous nations – Fraser River

- Aitchelitz First Nation;
- Chawathil Band;
- Cheam First Nation;
- Kwantlen First Nation;
- Kwaw'Kwaw'Apilt First Nation;
- Leq'á:mel First Nation;
- Matsqui First Nation;
- Popkum First Nation;
- Seabird Island Band;
- Shxw'ow'hamel First Nation;
- Shxwhá:y Village;
- Skawahlook First Nation;
- Skowkale First Nation;
- Skwah First Nation;
- Soowahlie First Nation;
- Sq'éwlets First Nation;
- Squiala First Nation;
- Sumas First Nation;
- Tzeachten First Nation;
- Yakwekwioose First Nation; and,
- Yale First Nation.

Indigenous nations - marine shipping

- Ditidaht First Nation;
- Esquimalt Nation;
- Pacheedaht First Nation;
- Scia'new First Nation;
- Snuneymuxw First Nation;
- Songhees Nation; and,
- T'Sou-ke Nation.

A summary of each Indigenous nation, including a description of their traditional territory and rights within their traditional territory and in relation to the Project area and the MSA, is provided in the Panel Report ([Appendix E: Indigenous Summaries](#)).

6.1 INDIGENOUS NATIONS CONSULTATION ACTIVITIES

The EAO coordinated Indigenous consultation with the Agency, including sharing information and co-drafting the impact on rights assessments reports, conducting joint consultation meetings, and drafting a federal and provincial Crown Consultation and Accommodation Report (CAR) which is provided in the separate referral packages to federal and provincial Ministers for decision. The CAR describes the consultation or engagement process, the key issues of concern raised by Indigenous nations and potential mitigations, and a summary of the Crown's assessment of potential impacts of RBT2 on Indigenous nations' rights and interests.¹³

The Agency and the EAO shared draft impacts on rights assessments with Indigenous nations in June and July 2020 and met with Nations to discuss and seek input on the assessments. The key conclusions from the impact on rights assessment reports were included in the CAR, which was also provided to the Indigenous nations for review and input prior to being finalized in February 2023. Capacity funding to support Indigenous nations' participation in the EA process was provided by the Agency. Additional capacity funding for Indigenous nations was also provided by VFPA.

In the Decision Statement for RBT2 issued on April 20, 2023, the federal Minister of Environment and Climate Change Canada confirmed that the consultation process undertaken was consistent with the honour of the Crown and that the concerns and interests of Indigenous groups are appropriately accommodated with Federal Conditions established.

Engagement with Tribes of Washington State

In addition, the Suquamish Tribe, the Swinomish Indian Tribal Community, and the Tulalip Tribes (Tribes of Washington State) and Lummi Nation from the United States identified their interests as being potentially affected by the RBT2 Project, including transboundary effects as well as effects within the portion of the Salish Sea and international shipping lanes located within Canada during the Panel process. The Crown's engagement to date with Lummi Nation and the Tribes of Washington State has focused on understanding interests and concerns with respect to RBT2 and integrating them into the assessment process. The Crown has worked to be responsive to the concerns raised, recognizing that potential project impacts may affect their communities.

The [executive summary of the CAR](#) is available on the Canadian Impact Assessment Registry.

6.2 KEY ISSUES RAISED BY INDIGENOUS NATIONS

Key issues raised by Indigenous nations that are of Provincial Interest include impacts on the current use of resources and harvesting rights due to RBT2 effects to:

¹³ Federal and Provincial Crown are referred as "the Crown" in the CAR for the purpose of fulfilling the procedural and substantive aspects of the Crown's constitutional duty to consult and, where appropriate, accommodate.

- Fish and fish habitat;
- Wetlands (and proposed habitat offsetting);
- Archaeological sites;
- Terrestrial and marine spills;
- Impacts from increased rail and road traffic; and,
- Existing cumulative effects.

Additional details on the key issues raised by Indigenous nations can be found in the CAR; key matters of provincial interest are summarized below, including conclusions made by the Panel. The EAO notes that the Panel also concluded on significant adverse effects for Indigenous nations. Although the Panel concluded on areas of federal jurisdiction (such as Current use of lands and resources for traditional purposes, and Cultural Heritage), they relate to the broader cumulative effects of industrialization and their impacts on Indigenous nations within B.C.

Fish and Fish Habitat

Concerns raised about Fish and Fish Habitat include impacts to juvenile Chinook salmon, juvenile chum salmon, eulachon migration, and sturgeon. Access to and use of harvesting areas around Roberts Bank was also raised as an issue, including associated sensory disturbances resulting in changes to the quality of the experience. The Panel concluded that RBT2 would result in a residual adverse effect on current use of lands and resources for traditional purposes for Indigenous nations who harvest in the vicinity of RBT2. The Panel found that the effect would not be significant, except for Tsawwassen First Nation and the Musqueam Indian Band.

As per section 16 of the [Panel Report](#) [p. 275], the Panel found that there would be no added effect from RBT2 on the quality of preferred current use resources. As concluded in section 21 – Human Health [p. 416], the Panel does not anticipate that the re-suspension of sediments during construction would contaminate marine resources.

Federal conditions will require VFPA to develop a Fish Habitat Offsetting Plan as required by the DFO for an authorization under the *Fisheries Act*, and in consultation with Indigenous nations. Federal conditions will also require VFPA to develop and implement a follow-up program in consultation with Indigenous nations as it relates to their current use of lands and resources for traditional purposes.

[Section 5.1](#) of this Report refers to federal conditions relating to fish and fish habitat, including to salmon and eulachon.

Wetlands

Tsawwassen First Nation noted that the foreshore marshes were declining due to adverse cumulative effects caused by industrial developments, dredging, diking and drainage, grazing and grubbing by overabundant snow geese, and rising sea levels. Tsawwassen First Nation stated that a strategic marsh restoration program was needed for ecosystem protection, beyond project-by-project offsetting as

presented by VFPA. Tsawwassen First Nation also noted that they were interested in the possibility of breaching the causeway to help restore the conditions on the foreshore and recommended that VFPA prioritizes restoration of deteriorated marshland and foreshore in its habitat restoration and Offsetting Plan.

Federal conditions include the development of a wetland compensation plan in consultation with Indigenous nations, federal and provincial authorities with the objective of no net loss in wetland function. [Section 5.1](#) of this Report refers to additional federal and provincial conditions regarding wetlands.

Archaeological sites

Several Indigenous nations raised concerns regarding potential effects of increased shoreline erosion and impacts to culturally important archaeological sites resulting from ship wake associated with RBT2 marine shipping traffic.

The Panel assessed potential impacts on Indigenous nations current use of lands and waters for traditional purposes on the basis that RBT2 would cause 260 additional container ships transiting the MSA on an annual basis, or 1.5 one-way vessel movements per day (the Panel considered the forecast provided by the VFPA's Marine Shipping Addendum). In its conclusion on physical heritage resources, the Panel indicated that marine shipping associated with the Project would not result in an adverse effect on archaeological sites due to coastal erosion. However, the Panel acknowledged that there are ongoing concerns about coastal erosion and the subsequent effects on archaeological resources and recommended that a coordinated monitoring program would help to identify and protect archaeological sites at risk of degradation. As described in section 2 of this Report, the VFPA provided an updated container vessel forecast (VFPA's IR response), which indicated that, in the most realistic scenario, the number of container vessels calling at the Port would remain the same with or without the operation of RBT2.

In the Whole of Government response, the Government of Canada indicated that it agrees with the intent of the Panel's recommendation and will explore how to work with Indigenous nations through existing and upcoming initiatives. This response also outlines that the BC Ministry of Forests Archaeology Branch is prepared to support an effort to establish an erosion monitoring program by providing access to and analysis of archaeological site information from the Provincial Archaeological Site Inventory.

Federal conditions require the VFPA to implement a follow-up program in consultation with Indigenous groups (Roberts Bank and marine shipping) to verify the predicted container vessel traffic. Federal conditions also include requiring the VFPA to develop and carry out a Physical Heritage Resources Management Plan to be developed in consultation with Indigenous groups (Roberts Bank) to mitigate the effects of RBT2 on any structure, site, or thing of historical, archaeological, paleontological, or architectural significance or physical heritage resources in the marine terminal area.

The EAO has proposed the Condition 14: Cultural and Archaeological Resources Management Plan to mitigate impacts from RBT2 on cultural and archaeological resources.

Road and Rail Traffic

Several Indigenous nations with traditional territories in the Lower Mainland raised concerns regarding potential impacts to their communities from increase road and rail traffic associated with RBT2. The VFPA noted in their [Project Overview and Rationale](#) that they are working with governments, industry and communities, to improve road and rail connections throughout the region. The VFPA facilitated the formation of the GTCF to help address road and rail transportation issues associated with port-related trade. [Section 5.1](#) of this Report further discusses road and rail.

6.3 ADDRESSING POTENTIAL IMPACTS ON RIGHTS

Addressing impacts on rights can include a variety of options, such as project design changes, federal and provincial conditions, adoption of Panel recommendations and reliance on Crown programs, plans, and policies or other measures.

Below is a summary of additional proposed provincial conditions and some of the existing Provincial Crown initiatives that may help address impacts on rights associated with RBT2 effects and cumulative effects within areas of Provincial Interests. Additional information on addressing potential impacts on rights is provided in the CAR.

Provincial Conditions

In addition to the federal and proposed provincial conditions described in [section 6.2](#) related to key issues of matters of Provincial Interest raised by Indigenous nations, the EAO has proposed the following conditions, which must be developed in consultation with Indigenous nations:

- Condition 9 Indigenous Monitoring Plan: a plan for providing opportunities for the participation of Indigenous nations in monitoring activities, and;
- Condition 15 Indigenous Training, Employment and Procurement Plan: a plan that includes measures to provide training opportunities for Indigenous monitors and to promote the hiring and retention of Indigenous nations and their members, as well as measures to support the procurement of goods and services from businesses owned by Indigenous nations.

Existing Provincial Crown Initiatives Related to Addressing Impacts on Rights

The Province of B.C. is currently leading several initiatives most of which are designed to collect habitat and monitoring information and to inform management measures on specific valued components or to help address cumulative effects.

Table 2: Existing Provincial Crown Initiatives

| Initiative | Description |
|------------------------------|---|
| Cumulative Effects Framework | WLRS is implementing the B.C. Cumulative Effects Framework . Indigenous nations are participating in and leading cumulative effects assessment projects to incorporate Indigenous knowledge and |

| Initiative | Description |
|---|---|
| | perspectives in decision-making. This may be an opportunity for Indigenous nations in the Lower Fraser Estuary and Salish Sea region to participate under this framework, which could be further linked to inform B.C. Coastal Marine Strategy and Canada’s South Coast Marine Planning. |
| Cumulative Effects to Wetlands on Roberts Bank | The South Coast Conservation Land Management Program led by WLRS and administered by Ducks Unlimited Canada, the Nature Trust of BC, and the Canadian Wildlife Service, includes conservation of wetlands and wetland functions with a goal to provide a more collaborative and integrated approach to the management of conservation lands for the benefit of fish, wildlife, species at risk, and their habitats. Program participants work on a variety of projects related to addressing cumulative effects in Roberts Bank and throughout the Fraser River Delta. They have made it clear that more work is required to address <i>existing</i> impacts on the delta. This work is currently limited by resources and funding, a challenge that would be further exacerbated by the addition of impacts from RBT2. |
| Cumulative Effects to Fraser River Estuary White Sturgeon | The Sturgeon Stewardship Baseline Objectives Tool has been developed to assist in evaluating potential impacts on sturgeon, and will in the future incorporate an impact-mitigation matrix. This is an initial screening tool for the purpose of project review in the Fraser River Estuary that assists in evaluating potential impacts on sturgeon. It identifies important habitat for juvenile sturgeon and can inform proponents of critical habitat in the early stages of planning and development. While acknowledging the challenges in directly addressing cumulative effects in the Fraser River Estuary, the use of such geospatial information tools and the Province’s ongoing projects in the Lower Fraser River contribute to the identification of cumulative effects and help to inform landscape-scale management and decision making. |
| Cumulative Effects to Barn Owls | The B.C. Barn Owl Recovery Team is implementing the 2014 Barn Owl Recovery Plan . The plan outlines provincial strategies and objectives for managing Barn Owl recovery. The plan provides advice to responsible jurisdictions or organizations that may be involved in or required to support recovery efforts for the species. Actions include recovery strategy planning, trend monitoring, habitat protection/rehabilitation and private land stewardship, and species/population management. Combined, the Barn Owl Recovery Plan and the <i>Guidelines for Raptor Conservation during Urban and Rural Land Development in British Columbia</i> guide development of mitigation and monitoring programs and allow proponents an early opportunity to align with the provincial regulatory context. |
| Fraser River Estuary Water Quality and Sediment Quality | ENV uses the Provincial Water Quality Objectives and Approved Water Quality Guidelines as benchmarks to compare water and sediment monitoring data, such as the Fraser River Water Quality Objectives. They are used to inform resource management decisions, identify which values should be addressed based on local concerns, promote water stewardship, and support long-term planning. |
| Air Quality and Climate Change | The Ministry of ENV’s Climate Action Secretariat noted that B.C.’s Renewable and Low Carbon Fuel Regulation sets standards to reduce the lifecycle emissions intensity of fuels used in B.C., including those used for on-site transportation at port facilities. B.C. actively promotes the use of liquefied natural gas bunkering and electrification for shore power and on-site transportation at port facilities. This helps reduce projected emissions and cumulative effects on air quality and GHG emissions. |
| Rail and Road Traffic | <p>In collaboration with the VFPA, the Province has identified improvements to the provincial public highway system that are anticipated to be necessary to facilitate future demand for highway capacity, including the future demand driven by the operation of Terminal 2, and has negotiated cost sharing agreement to fund these improvements.</p> <p>As members of the Gateway Transportation Collaboration Forum (GTCF) the Province and the VFPA are actively involved in identifying and advancing infrastructure projects that aim to grow the</p> |

| Initiative | Description |
|------------|---|
| | economy, create well-paying jobs, and support livable, green communities while improving safety, mobility, and air quality in the Lower Mainland. The work of the GTCF is focused on understanding stakeholder interests and issues, collaborating on priority infrastructure projects, evaluating and prioritizing projects, and identifying viable funding sources. |

The EAO acknowledges concerns raised by Indigenous nations associated with the reliance of the Crown's large inventory of initiatives to address cumulative effects due to the various stages of implementation, scope, and duration of funding on these initiatives. In addition, effectiveness and future outcomes are yet to be determined, and there is need for a more coordinated and holistic approach among initiatives in the Lower Fraser River, Fraser River Estuary, and Salish Sea to identify, compile and integrate the information that is being collected.

The EAO also heard concerns regarding the associated impacts of marine shipping and the Mercator Report's projections (that the number of container vessels calling at the Port would remain the same with or without the operation of RBT2, as referenced in [Section 2.0](#) of this Report), and acknowledges that substantial information was provided by Indigenous nations on how cumulative effects may be experienced by Indigenous nations and where RBT2 effects intersect with known constraints and cumulative effects (as described in the CAR chapters).

The EAO encourages the Government of Canada to find appropriate opportunities to work with Indigenous nations regarding the existing cumulative effects concerns, monitoring the Mercator Report's projections, and to supporting reconciliation, which could include:

- 1) Identifying factors that could contribute to vessel congestion in the Salish Sea from RBT2;
- 2) Monitoring for increased vessel traffic and congestion in the Salish Sea from RBT2; and,
- 3) Identifying measures to mitigate observed adverse effects to Indigenous nation interests from RBT2 vessel traffic and congestion.

Federal conditions require the VFPA to develop and implement a follow-up program in consultation with Transport Canada and Indigenous nations to verify the updated container vessel traffic predictions and to mitigate any effects from the Project to the current use of lands and resources for traditional purposes and any increases in underwater noise.

[Section 5.1.11](#) of this Report provides more details on the findings of the Panel regarding the Fraser River Estuary Salish Sea and provides a reference to federal initiatives identified in the Whole of Government Response that are relevant to help address cumulative effects in the context of RBT2.

Mutual Benefit Agreements with Indigenous nations

The VFPA advised the Panel that it had negotiated mutual benefit agreements with a number of Indigenous nations that would provide meaningful and tangible benefits to the signatory communities. The VFPA further noted that it did not rely on those agreements in making its conclusion of no residual effects

on current use. The VFPA also stated that it has 26 mutual benefit agreements (Agreements) with the following Indigenous nations, in which Indigenous nations express their support for and/or non-objection to RBT2:

- Quw'utsun Nation (formerly Cowichan Nation Alliance - Cowichan Tribes, Halalt First Nation, Stz'uminus First Nation);
- Ditidaht First Nation;
- Esquimalt Nation;
- Ts'uubaa-asatx First Nation (formerly known as Lake Cowichan First Nation);
- Lyackson First Nation;
- Maa-nulth Treaty Society (5 nations: Huu-ay-aht First Nations, Ka:'yu:'k't'h'/Che:k'tles7et'h First Nations, Toquaht Nation, Uchucklesaht Tribe, and Ucluelet First Nation);
- Malahat Nation;
- Métis Nation British Columbia;
- Musqueam Indian Band;
- Pacheedaht First Nation;
- Pauquachin First Nation;
- Penelakut Tribe;
- Scia'new First Nation;
- Semiahmoo First Nation;
- Songhees First Nation;
- Tsartlip First Nation;
- Tsawout First Nation;
- Tsawwassen First Nation.
- Tseycum First Nation;
- T'Sou-ke Nation; and,

As captured in the CAR, some Indigenous nations who have come to an Agreement with the VFPA on project-specific impacts, highlighted that:

- These Agreements are based on available information and commitments and input is still under development to operationalize;
- Agreements with the VFPA are not in lieu of Crown Accommodation;
- There are significant concerns on the cumulative impacts of RBT2 on the marine environment (Fraser River Estuary and Salish Sea) and the Crown's approach to addressing the cumulative effects in the marine environment; and,
- There are significant concerns on the cumulative effects of the road and rail activities associated with RBT2.

7.0 PUBLIC CONSULTATION

Public consultation requirements are intended to provide meaningful opportunities for the public to provide input. The VFPA was required to prepare a public consultation plan early in the EA process that set out the VFPA's consultation objectives and activities, including community open houses.

Public consultation activities for the Panel process and opportunities for public input included:

- A public hearing in 2019. Public comments submitted during the Panel process are discussed in section 1.2.2 of the Panel Report. The Panel's decisions on motions filed during the public hearing can be found on the [RBT2 federal registry](#).

Public consultation activities post Panel included:

- The Agency consultation on additional information provided by the VFPA, following an IR issued by the federal Minister of ECCC in August 2020, and on the draft federal EA conditions for RBT2. This consultation happened from December 15, 2021 to March 15, 2022; and
- Opportunity to comment on this Report during a 30-day comment period conducted by the EAO from May 9, 2023, to June 8, 2023.

Key issues raised by the public during the EA process that overlap with areas of Provincial Interests included potential effects of RBT2 on:

- Fish and fish habitat, including impacts to Fraser River salmon;
- Species at risk, terrestrial wildlife and their habitat;
- Air quality and human health;
- Socio-economic conditions;
- Traffic congestion associated with increased road and rail traffic;
- Accidents and malfunctions, including potential spills.

Key issues raised by the public during the Panel process, and the EAO Public Comment Period helped inform the EAO's assessment of RBT2, including requests for technical information during the EA, the completion of this Report, and the development of EAO's proposed EA Certificate conditions.

[Section 5.1](#) of this Report refers to valued components where the Panel found adverse effects from RBT2 that overlap with areas where the Province of B.C. has interests and concerns raised by the public.

8.0 LOCAL GOVERNMENT CONSULTATION

Key concerns raised by local governments include potential environmental, transportation, socioeconomic and other impacts (including cumulative impacts and potential hazards of impacts from accidents and malfunctions) of increased container rail and truck traffic through and beyond the Lower Mainland. Of

note, leadership for both [Delta](#) and [City of Richmond](#) have indicated they do not support RBT2 as currently proposed.

The EAO has considered the concerns of and potential effects to local governments during the EA, which are discussed further in the relevant sections of the Panel Report. [Section 4](#) of this Report contains information regarding local governments as participants on the PRT.

[Section 5.1](#) of this Report refers to valued components where the Panel found adverse effects from RBT2 that overlap with areas where the Province of B.C. has interests and concerns raised by local governments.

Delta

Delta raised multiple concerns through the Panel process, as well as during consultation with the EAO, including adverse community impacts related to worsened local noise, light and air quality as a result of RBT2, and impacts from increased road and rail traffic, including traffic impacts on air quality. Delta is also concerned that RBT2 would increase ongoing development pressure on agricultural land.

Federal and provincial conditions have been proposed to mitigate adverse effects from the construction and operation of RBT2 to air quality, from noise and vibration, and to ambient light. These conditions include provisions for engaging local governments, including the City of Delta. Federal conditions are also intended to mitigate effects to agriculture. [Section 5.1.14](#) of this Report contains information regarding road traffic.

Delta raised concerns regarding organized crime at the port and community safety. The Panel recommended that the VFPA be required to negotiate an agreement with Delta to allocate sufficient funds to implement an integrated police team commensurate with the requirements of RBT2, and develop a monitoring plan to evaluate the incremental increase in spending for particular services and infrastructure to determine if RBT2 is a financial burden to Delta, including mechanisms for increasing compensation in the event that revenues are insufficient to meet additional expenditures induced by RBT2. With the implementation of these and other recommendations the Panel concluded RBT2 would not result in an adverse effect on the social-economic conditions, locally or in the region, as a result from changes in services, infrastructure and RBT2 revenues. Federal conditions will not require the VFPA to implement these recommendations.

Delta also indicated it supports the need for regional strategic assessments of the Fraser River Estuary and the Salish Sea, and the development of long-term environmental monitoring plans for these areas.

9.0 OTHER JURISDICTIONS

The federal and provincial EA process included engagement with Washington State and the United States (U.S.) Environmental Protection Agency regarding transboundary issues associated with RBT2, including potential effects from the marine terminal construction, operations, and marine shipping effects.

Transboundary issues include RBT2 marine shipping traffic effects and cumulative effects of marine shipping activities in U.S. waters, as the inbound shipping lanes in Juan De Fuca Straight are within U.S. waters, and the outbound shipping lanes are within Canadian waters.

In accordance with the Memorandum of Understanding Between the Washington State Department of Ecology and the EAO (2003),¹⁴ the EAO provided notification to the Washington State Department of Ecology at the start of the EA process on June 2, 2014. The EAO noted that the Canadian federal Minister of ECCC announced on January 7, 2014, that RBT2 was being referred to an independent Review Panel for an EA and the information was available on the Canadian Impact Assessment Registry [RBT2 website](#).

10.0 ADDITIONAL CONSIDERATIONS

Ministers may consider other matters that are relevant in making their decision in whether to grant an EA Certificate for RBT2. The EAO includes the factors detailed below for consideration.

Importance of RBT2 and Economic Benefits

In the summary of key findings, the Panel noted that:

The purpose of the Project is consistent with Canada's role as a trading nation, and RBT2 would enable an increase in container terminal capacity on Canada's west coast. The Project would also support competitiveness for Canadian markets linked to a marine shipping supply chain facing important changes, such as: mergers of ocean shipping lines; ocean carriers' and terminal operators' economic sustainability; terminal modernization and an increase in container ship size.¹⁵

As noted in the Panel Report, the VFPA expects RBT2 to create 12,700 person-years of direct, indirect, and induced employment during construction, including 4,150 person-years of direct employment from onsite terminal construction activities. VFPA stated these jobs would generate \$1 billion in labour income, and an estimated \$1.3 billion in revenues for B.C. businesses supplying materials and goods and services for construction activities. Of that, \$837 million was expected to accrue to supplier industries in Metro Vancouver.

During operations, onsite terminal activities would generate an estimated 1,550 person-years of direct, indirect, and induced employment each year, including 928 person-years of direct employment. RBT2 would also generate approximately 11,000 direct jobs annually from off-terminal operations, including trucking and warehousing. It was expected that direct employment would generate \$186 million in labour

¹⁴ Available online: <https://www2.gov.bc.ca/assets/gov/environment/natural-resource-stewardship/environmental-assessments/working-with-other-agencies/eao-mous-and-agreements/eao-memorandum-of-understanding-with-washington-state.pdf>

¹⁵ Federal Review Panel Report, March 27, 2020: <https://iaac-aeic.gc.ca/050/documents/p80054/134506E.pdf>

income annually, as well as \$33 million in revenues for provincial suppliers and services. RBT2 would be designed as a semiautomated terminal and would create over 900 new terminal jobs, most of which were expected to be unionized longshore jobs.

During construction, RBT2 would generate an estimated \$174 million in provincial and local government taxes and fees, as well as \$127 million in federal tax revenues. During operation, on-terminal activities would generate \$19.7 million in provincial and local government revenues annually. The VFPA is also committed to developing an Indigenous Training, Employment, and Procurement Plan for the Project to ensure that socio-economic benefits from the Project flow to Indigenous nations. The VFPA would develop this plan in collaboration with Indigenous nations and through the Indigenous Advisory Committee prior to commencing Project construction.¹⁶

The VFPA presented updated information on the economic benefits of RBT2, which took into consideration the effect of the global COVID-19 pandemic on demand for container trade, updated information on the construction and transportation labor force and other economic conditions. Updates show an increment on the benefits presented above.¹⁷

Resources or Values that may no Longer be Available for Future Generations

The EAO acknowledges that there could be potential impacts to resources or values of importance to current and future generations. As described in the Panel Report, RBT2 would require the conversion of approximately 168.1 ha of intertidal and subtidal habitat on Roberts Bank in the Fraser River estuary, an ecologically productive and sensitive area of coastal British Columbia.

RBT2 not only would become permanent in the landscape but would be situated immediately adjacent to Tsawwassen First Nation Lands where Tsawwassen First Nation fish and gather food. This could result in the potential loss of preferred cultural and spiritual areas and the potential interruption of cultural practices leading to reduced ability to transmit a way of life to future generations.

A theme found across a number of CAR chapters is how fishing and harvesting are critical avenues through which Indigenous nations share their teachings and transmit their culture to younger generations. Indigenous nations provided information to better inform the Crown and decision makers on how cumulative effects are experienced by Indigenous nations and where potential effects of RBT2 intersect with existing disruptions to cultural continuity caused by development in the Lower Fraser Estuary and Salish Sea.

Further consultation with Indigenous nations is required to support the development of monitoring and management plans prior to construction and operation, should RBT2 be approved. In addition to federal

¹⁶ Reference: VFPA Closing Submission to the RBT2 Review Panel, dated August 26, 2019.

¹⁷ IR2020-7 Economic benefits of RBT2, VFPA's response to federal Minister of ECCC – Agency's Registry [document number: 2083](#).

conditions, relevant provincial conditions that would inform additional mitigation measures include:

- Condition 14 Cultural and Archaeological Resources Management Plan, which applies to archaeological resources and cultural sites in the Marine Terminal Area; and,
- Condition 16 Vegetation, Wildlife and Wetland Management and Wetland Offsetting Plan, which includes measures to incorporate Indigenous stewardship values related to vegetation, wildlife, wildlife habitat and wetlands, and restoration of plant species of cultural significance to Indigenous Nations.

Requests for an Independent and Comparative Assessment in Examining the RBT2 and GCT Deltaport Expansion – Berth Four Projects

Both RBT2 and GCT Deltaport Expansion – Berth Four (DP4) are being proposed with the purpose of expanding the capacity of the existing Deltaport terminal. The EAO have heard from Indigenous nations that the RBT2 decision should be considered in light of DP4, which is currently in the [Impact Statement Development and Review phase](#). Specific concerns refer to the potential for RBT2 and DP4 to both be approved and the cumulative effects thereof.

Upon this request, the EAO has engaged in discussions with concerned parties and explained how the two independent projects are in different stages in the EA process and the potential effects from DP4 are yet to be known and assessed. Delta also identified as a concern that the Panel Report does not address DP4 as a potential alternative to RBT2. The Panel described in their report how they had no mandate to review RBT2 in comparison to the competing DP4 project and concluded that the VFPA's assessment of alternative means for carrying out RBT2 was appropriate (Panel Report, Section 6 Alternative Means of Carrying out the Project). As such, there has not been a comparative analysis of the two projects. However, the EIS describes alternative means for carrying out the RBT2 project, including alternative locations within B.C., alternative orientations and locations at Roberts Bank, and alternative construction methods as well as rationale for why the proposed location for RBT2 was selected.

The EAO acknowledges views from EA participants on whether any further container terminal expansion is needed, particular in the context of existing cumulative effects.

11.0 CONCLUSIONS

Based on:

- The scope of the EA as defined by the Agency in the EIS Guidelines and as per the B.C. Minister of ENV's Section 14 Order;
- Information contained in the Panel Report (dated March 27, 2020);
- The VFPA's EIS (2015), supplemental information provided during the Panel process, and response to the federal Minister of ECCC's IR (2021);
- VFPA, the Agency and the EAO's consultation with Indigenous nations, federal, provincial, and local

- government agencies, and the public;
- Comments on RBT2 to the Panel made by Indigenous nations, federal, provincial and local government agencies, U.S. and Washington State, and the Panel's Response to the comments;
 - Comments on RBT2 received during the public comment period and the VFPA's responses to the issues raised;
 - Issues raised by Indigenous nations regarding the potential impacts of RBT2 and the VFPA's response and best effort to address these issues;
 - The design of RBT2 as specified in the proposed Schedule A (Certified Project Description) of the EA Certificate to be implemented by VFPA during all phases of RBT2;
 - Mitigation measures identified as proposed conditions in Schedule B (Table of Conditions) of the EA Certificate to be undertaken by VFPA during all phases of RBT2, should RBT2 be approved; and,
 - The existing programs in place or proposed actions that the federal and provincial governments are prepared to take to respond to the Panel's recommendations in support of future federal and provincial decisions on RBT2.

The EAO is satisfied that:

- The EA conducted by the Panel has adequately assessed the potential adverse effects of RBT2 on valued components that may relate to areas of provincial jurisdiction¹⁸. The EAO has reported where potential adverse effects from RBT2 could have impacts on matters of Provincial Interest and where uncertainty still exists;
- Practical means have been identified to prevent or reduce any potential adverse effects of RBT2 to areas of provincial jurisdiction. The EAO acknowledges that, as found by the Panel, not all effects would be fully mitigated, such as:
 - effects on wetlands and wetland functions;
 - effects on juvenile chum and Chinook salmon;
 - effect on human health due to chronic exposure of annual-average NO₂ (during the construction phase of RBT2); and
 - contribution to additional greenhouse gas emissions in the Metro Vancouver area;
- Consultation has been carried out in good faith and the Crown's process of seeking to understand potentially outstanding issues and impacts was reasonable;
- The potential adverse effects on the Indigenous Interests of Indigenous nations have been minimized and accommodated to an acceptable level, or otherwise there could be a path to addressing the potential adverse impacts of RBT2; and,
- The provincial Crown has fulfilled its obligations for consultation and accommodation to Indigenous nations relating to the issuance of a provincial EA Certificate.

¹⁸ A description of the areas of provincial jurisdiction is included in [Common Terms and Acronyms](#).

12.0 SCHEDULES

Schedule A: Provincial Certified Project Description

Schedule B: Provincial Conditions

13.0 APPENDICES

Appendix 1: Major Milestones of the Federal and Provincial EA

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13.1 APPENDIX 1: MAJOR MILESTONES OF THE FEDERAL AND PROVINCIAL EA PROCESSES

| Dates | Milestones |
|-------------------------------------|--|
| Pre-Application¹⁹ | |
| September 2013 | The VFPA submits Project Description to the Agency. |
| November 5, 2014 | The EAO issues a Section 10 Order to refer RBT2 to the Minister for a determination under Section 14 of the 2002 Act. |
| January 7, 2014 | The federal Minister of ECCC refers RBT2 to an independent Federal Review Panel to conduct the federal EA. The Panel Terms of Reference were issued in 2015 and amended in 2019 (Also found in Appendix B of the Panel Report). |
| January 2014 | The Agency finalizes and issues the EIS Guidelines to the VFPA. |
| December 19, 2014 | B.C. Minister of ENV issues the Section 14 Order for conducting the RBT2 EA process. |
| March 27, 2015 | VFPA submits Environmental Impact Statement (EIS) to the Agency. |
| April 17, 2015 | The Agency provides the Updated EIS Guidelines to include information requirements regarding potential effects of marine shipping associated with RBT2, as well as the potential provincial social, economic, heritage and health effects of RBT2. The Agency issues the Panel Terms of Reference. |
| April 29, 2015 | VFPA submits letter advising the Agency that the EIS submitted on March 27, 2015 was intended to meet both federal and provincial EA requirements. |
| October 26, 2015 | The VFPA responds to the updated EIS Guidelines by issuing the Marine Shipping Addendum to the Environmental Impact Statement which includes an assessment of potential effects resulting from marine shipping associated with RBT2. |
| Application Review | |
| Panel process | |
| July 6, 2018 | The Panel invites written public comments on the responses from the VFPA to the Panel's information requests, and on the draft Public Hearing Procedures. |
| April 2019 | The Agency further updates EIS Guidelines to include marine shipping that is beyond the care and control of the VFPA and within the 12 nautical mile limit of Canada's territorial sea within the definition of the designated project. |
| May 14 to June 24, 2019 | The Panel holds public hearing on RBT2. |

¹⁹ Pre-Application and Application Review refers to the provincial EA under the 2002 *Environmental Assessment Act*.

| Dates | Milestones |
|---|---|
| July 25, 2019 | B.C. Minister of ENV issued a Section 15 Order to amend the Section 14 Order based on the updated federal EIS Guidelines for RBT2 issued by the Agency, to include potential environmental effects from marine shipping, and potential provincial social, economic, heritage and health effects. |
| March 27, 2020 | The Panel submits Panel Report to the federal Minister of ECCC. |
| Post Panel Process | |
| April 3, 2020 | The federal Minister of ECCC approves a 90-day timeline extension for the federal EA decision on RBT2 recognizing extenuating circumstances arising from COVID-19. |
| August 24, 2020 | The federal Minister of ECCC issues an Information Request requiring the VFPA to provide additional information related to container vessel traffic forecast, fish habitat offsetting, mitigations measures, and effects to SRKW, biofilm and migratory birds, and effects to Indigenous nations. |
| September 30, 2020, January 21, 2021, July 12, 2021 , and August 24, 2021 . | VFPA submits responses to the EAO's information requests relating to agriculture, road and rail effects, engagement with local governments, provincial permits, air quality, shellfish contamination, stormwater, and eulachon. |
| September 24, 2021 | The VFPA submitted their IR response to the federal government. It also provides an updated Designated Project Description . |
| December 15, 2021 | The Agency commenced a 60-day public comment period on the draft federal conditions and the VFPA's IR response. |
| November 24, 2022 | The EAO announces that the Chief Environmental Assessment Officer made a decision that the assessment of RBT2 will continue under the previous 2002 Act, rather than transition to the new process under the 2018 Act. |
| January 23, 2023 | The federal Minister of ECCC determines that the VFPA has responded to the August 2020 IR in sufficient detail. The federal EA timeline of 89 days until a federal decision on RBT2 resumes. |
| April 20, 2023 | Federal Minister of Environment and Climate Change Environmental Assessment Decision Statement. The Whole of Government Response and executive summary of the Crown Consultation and Accommodation Report were made available in the Canadian Impact Assessment Registry. |
| May 9, 2023 | The EAO finalizes the draft Summary Assessment Report of the provincial EA process for RBT2 and makes it available for the public comment period. |