



KEEPING TANKERS OUT OF BC'S NORTH COAST: PREVENTING THE NEXT *EXXON VALDEZ*

WEST COAST ENVIRONMENTAL LAW – 2009

1. What is the north coast oil tanker moratorium?

British Columbia's north coast oil tanker moratorium, covers the Dixon Entrance, Hecate Strait and Queen Charlotte Sound – the waters between Alaska, Haida Gwaii and Vancouver Island. The federal government used its authority over shipping to ban oil tankers in 1972, triggered by widespread concerns over oil spills. Coastal First Nations, the public and the provincial government believed the risks of oil spills from tankers servicing the Trans-Alaska Pipeline system were unacceptably high due to the treacherous nature of BC's Inside Passage. The moratorium was designed to safeguard the vibrant ecosystems and economies along the coast from such potential disasters. The oil tanker ban was not passed into legislation, but it has been respected for the last 37 years. Now the tanker ban is at risk, as oil tankers are being proposed on the coast. To protect the coast, Ottawa's ban on tankers must be made into law.

In recent years, there have been periodic studies commissioned by both the federal and provincial governments to reassess whether to lift the tanker moratorium. Each study has concluded that the risk of tanker spills is too high. In 2003-04, the federal government initiated a three-part review process including a scientific review by the Royal Society of Canada (the RSC report), a First Nations engagement process (the Brooks Report), and a public review process (the Priddle Panel).

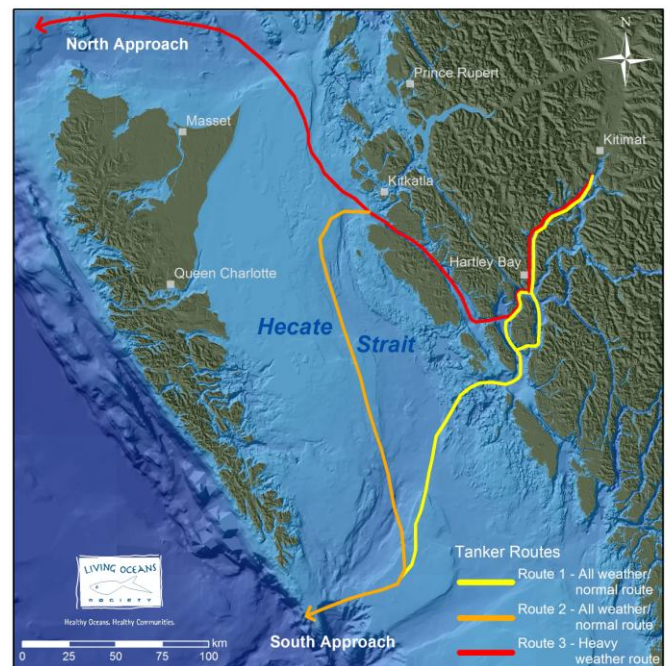
The RSC report concluded that "the present restriction on tanker traffic along the West Coast of British Columbia should be maintained for the time being."¹ The Brooks report found that all First Nations who participated wanted the moratorium to stay in place at this time.² The Priddle panel determined that 75 percent of British Columbians polled want the moratorium to stay in place as

¹ Canada, *Report of the Expert Panel on Science Issues Related to Oil and Gas Activities, Offshore British Columbia*, (Ottawa: Royal Society of Canada Scientifics Review, 2004) at xix.

² Canada, *Rights, Risks and Respect: A First Nations Perspective on the Lifting of the Federal Moratorium on Offshore Oil & Gas Exploration in the Queen Charlotte Basin of British Columbia*, (Ottawa: Natural Resources Canada, 2004) at 2.

"the risks to environment associated with any oil and gas activities would offset any benefits that might result."³

Image courtesy of the Living Oceans Society



2. Why is the oil tanker ban at risk?

The push to lift the 37-year old tanker moratorium comes from several proposed tanker and pipelines projects designed to expand the extraction and transport of crude oil from the Alberta tar sands to Asia and the United States.

Development of the Alberta tar sands ranks as one of the most damaging energy projects on the planet. The oil-rich sand is removed from the ground through a giant mining operation that leaves huge holes and toxic tailing ponds that can be seen from the moon. The oil is then essentially cooked out of the tar-laced sand.

³ Canada, *Report of the Public Review Panel on the Government of Canada Moratorium on Offshore Oil and Gas Activities in the Queen Charlotte Region British Columbia*, (Ottawa: Natural Resources Canada, 2004) at ii. (Chair: Roland Priddle).

This process consumes vast amounts of natural gas. A huge amount of natural gas, almost equal to that produced from the Mackenzie Valley, will be needed to extract tar sands oil. In fact, it takes far more energy, water, and land area to produce oil from tar sands, than conventional methods. In the result, about five times the amount of greenhouse gasses are emitted.⁴

Tar Sands photo courtesy of David Dodge, the Pembina Institute



These projects have enormous implications for British Columbia. Most would require the construction of massive pipelines starting in Kitimat, extending across BC and into Alberta. Crude oil would flow from Alberta to Kitimat, while condensate and liquefied natural gas, both used in the tar sands crude oil extraction and production process, would flow from Kitimat to Alberta.

It is anticipated that approximately 225 condensate and crude oil-laden tankers a year would travel up and down the Douglas Channel as a result of the Enbridge Northern Gateway pipeline project alone.⁵ This traffic could include approximately 18 condensate and crude oil tankers per month, including four to five Very Large Crude Carriers (VLCCs) with a capacity of 2 million barrels of oil or more per VLCC. Each of these ships is about 350 metres long – the length of 3.5 football fields– and 60 metres wide.⁶

3. How likely is a spill?

The north and central coast waters present an extremely risky environment for tanker traffic. The area is one of the most active earthquake zones in Canada and the stormy unpredictable nature of the weather has made it famous for its weather bombs, the most

⁴ Nyboer, John & Tu, JianJun. 2008. *GHG Emission Trend Analysis in the Fossil Fuel Production Industries, 2008 Update*. Burnaby (B.C.): Canadian Industrial Energy End-Use Data and Analysis Centre, Simon Fraser University at 36, cited by Environment Canada, 2008. *National Inventory Report – Greenhouse Gas Sources and Sinks in Canada, 1995-2006* (Submission to the UN Framework Convention on Climate Change).

⁵ *Enbridge Information Brochure*, January 2009, available at <http://www.northerngateway.ca/files/NGP-Brochure.pdf>.

⁶ *Ibid.*

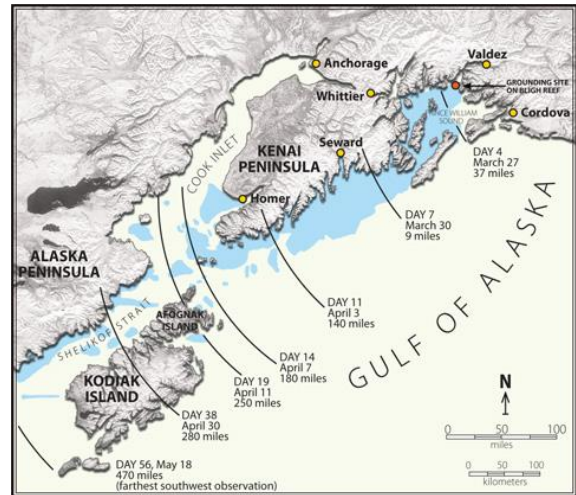
severe type of winter storm. Winter winds have been recorded at 200 km/hour, with waves of 29 metres (almost 100 feet).⁷

Recovering 15 percent of the oil spilled from a major tanker accident is considered a success. The technology used to recover oil from the ocean only functions in ideal conditions such as calm weather. Winds exceeding 25 knots, or waves exceeding one metre, greatly hamper oil spill clean up efforts.⁸

Based on the amount of oil proposed to travel through the Northern Gateway pipeline, there would be a crude oil spill of over 1,000 barrels about every five years, with a catastrophic spill of over 10,000 barrels once every 12 years.⁹

In 1989, the *Exxon Valdez* spilled approximately 11 million gallons – the equivalent of 257,000 barrels or 38,800 metric tonnes – of crude oil when it ran aground in Prince William Sound, Alaska. The spill impacted over 1,100 miles (approx. 1,700 km) of shoreline along the Alaskan coast, covering a distance of 460 miles (approx. 740 km),¹⁰ the same distance as BC's entire coast from Prince Rupert to Vancouver.

Image courtesy of the *Exxon Valdez* Oil Spill Trustee Council



4. How will wildlife and fisheries be impacted?

The north coast is an extremely rich ecological area. It includes numerous salmon and Gray whale migratory routes, at least 650 spawning rivers, the Pacific Flyway, and the feeding habitat of Humpback whales and Orca.

⁷ Living Oceans Society, *Offshore Riches: An Evaluation of the Real Wealth of Offshore British Columbia*, Submission to the Public Panel Reviewing the Moratorium on Offshore Oil and Gas in British Columbia (2004).

⁸ *Ibid.*

⁹ Dogwood Institute, *Fact Sheet: Estimated Frequency of Oil Spills from Enbridge Inc.'s Northern Gateway Project*, March 5 2009, adapted from table 3.5 of Timothy Van Hinte. 2005. *Managing impacts of Major projects: An analysis of the Enbridge Gateway Pipeline Proposal*, Simon Fraser University thesis available at <http://ir.lib.sfu.ca/handle/1892/707>.

¹⁰ *Exxon Valdez Questions and Answers*, Exxon Valdez Oil Spill Trustee Council, <http://www.evostc.state.ak.us/facts/qanda.cfm>.

The commercial fishery in BC employs approximately 16,000 people. Sport fishing, fish processing and commercial fishing generate close to \$1.9 billion combined each year.¹¹ In addition, the north coast crab fishery supports 41 commercial vessels that fish Dungeness crab in Hecate Strait; from this fishery alone, \$20 million worth of crab is produced, and it employs 145 people on vessels and 250 on shore.

An oil spill along the BC north central coast could kill thousands of marine animals and destroy habitats as well as drastically affect the fishing and tourist industries.

Photo of spawning fish off Campagna Island, courtesy of West Coast Environmental Law



5. How will First Nations be impacted?

The Supreme Court of Canada has confirmed that the Crown has an ongoing duty to consult and accommodate First Nations with respect to decisions that potentially infringe Aboriginal Title and Rights. If this duty is not met, approvals and decisions are vulnerable to legal challenge.

The proposed tanker and pipeline projects would affect the traditional territories and rights of at least 31 inland and 10 coastal First Nations, and many more First Nations downriver and upriver of the pipeline route in the Fraser, Skeena and Mackenzie river basins. A recent study has concluded that the pipeline would have a profound impact on cultural activities such as hunting, fishing, trapping, berry picking, spiritual activities, traditional village sites, recreational activities, and travel routes, with few if any corresponding benefits to First Nations communities.¹² The impacts of an oil tanker spill on the rights and cultures of coastal

¹¹ BC Ministry of Environment, *British Columbia's Fisheries and Aquaculture Sector* (April 2007) at pp. 6-7, <http://www.env.gov.bc.ca/omfd/reports/BC-Fisheries-Aquaculture-Sector-2007.pdf>

¹² Overview of the Carrier Sekani Tribal Council Aboriginal Interests & Use Study on the Enbridge Gateway Pipeline, 2006, at 4.

First Nations and others that depend on salmon are potentially devastating.

Several First Nations have put the Crown on notice that they must be formally involved in all decisions concerning the proposed tankers and pipelines, including preliminary decisions as to whether to lift the tanker moratorium. To date, this has not occurred with all First Nations whose Title and Rights stand to be impacted. In 2006 the Carrier Sekani Tribal Council filed a legal challenge to the federal government's decision to proceed with the regulatory process without first dealing honourably with them. Based on recent case law,¹³ the Crown may be vulnerable to a similar legal challenge when an agreement is reached between federal regulators regarding the regulatory review process for the Enbridge project.

6. What are the health risks?

There are potentially serious risks to human health from oil and gas development. Oil spills in particular carry a significant potential for harm through exposure to polycyclic aromatic hydrocarbons (PAHs), a known carcinogen that persists long after an oil spill has occurred. Condensate also contains persistent PAHs and is acutely toxic, although the impacts of condensate spills are less well-known. Pipeline oil spills into rivers and streams, and onto the land, carry the potential to contaminate drinking water supplies by leaching of spilled oil into groundwater. Communities also face the health risks associated with consuming fish and wildlife contaminated by spilled oil or other toxic substances used in oil and development.

The day-to-day impacts of increased air pollution, noise, as well as the psychological stress of living with the risks of a pipeline or tanker spill are all health impacts that the communities along the pipeline and tanker traffic routes would face if a northern pipeline is built.

7. Will the law protect British Columbians and the coast?

Tanker and pipelines that cross provincial boundaries, like those currently proposed for Kitimat, are regulated by the federal government through the National Energy Board (NEB) and the Canadian Environmental Assessment Agency (CEAA).

On February 9, 2009, Ottawa issued a notice that the NEB and CEAA would conduct joint environmental assessment (called the joint review panel) for the Enbridge Northern Gateway Pipeline. Other types of studies, such as socio-economic assessments are also necessary prior to project approval: however, under the current regulations, the recommendations made in the assessments are non-

¹³ *Canada (Environment) v. Dene Tha' First Nation*, 2006 FC 1534 (Fed. Ct.) affirmed 2008 FCA 20 (Fed. Ct. of Appeal)

binding and the project could be approved even if significant adverse environmental and socio-economic effects were found.¹⁴ In fact, studies have shown that on average, 99 percent of the projects submitted to CEAA have been approved.¹⁵

Historically, the BC EAO's project approval record was similar to that of CEAA; however, recently, a joint review panel of the BC EAO and CEAA recommended to the federal and provincial governments not to proceed with the Kemess North Copper-Gold Mine project because "...the social and economic benefits were far outweighed, on balance, by the significant risks of environmental, social and cultural effects..."¹⁶ We are hopeful that this decision sets a new precedent with CEAA and the BC EAO for taking a precautionary approach in making recommendations on projects that carry significant environmental risks.

Tankers. If the Enbridge pipelines proceed, it will mean that the ban on oil tankers on Canada's Pacific North Coast has to be lifted. This is not the course of action favoured by British Columbians. Polls consistently show that at least 7 out of 10 British Columbians support a ban on oil tankers in British Columbia's inside coastal waters. It is time to strengthen the existing tanker moratorium through a legislated prohibition on oil tanker traffic in our sensitive northern waters.

8. What is BC's history of spills?

The potential for significant environmental harm from ships and pipeline spills is high. Federal and provincial regulations have failed to prevent tanker or pipeline spills and leaks in Canada. Over the last few years in British Columbia alone, we have seen several spills in urban and rural areas on the north and south coast, including the tragic sinking of the Queen of the North off Gil Island, resulting in loss of life and over 15,000 litres of oil and 225,000 litres of diesel spilled, covering neighbouring islands and disrupting ancestral fishing and harvesting activities.

On July 24, 2007, a pipeline rupture in an urban neighbourhood in Burnaby spilled more than 240,000 litres of crude oil into Burrard Inlet and oiling beaches, marine and other wildlife several kilometers from the spill site. In May 2009, a nearby oil tank farm spilled about 200,000 litres of oil, none of which (luckily) ended up in the sea.

On August 15, 2007, a barge loaded with logging equipment, including a fuel truck carrying diesel fuel, tipped and dropped its cargo in the Robson Bight (Michael Biggs) Ecological Reserve in the Johnstone Strait off Vancouver Island, a protected area where threatened northern resident killer whales feed and rub their bellies.

¹⁴ *Canadian Environmental Assessment Act*, R.S.C. 1999, c. 33, s. 37.

¹⁵ Boyd, David R. "Unnatural Law" UBC Press 2003 at 151.

¹⁶ Kemess North Joint Review Panel Summary, September 17, 2007, <http://www.ceaa-acee.gc.ca/050/documents/23469/23469E.pdf>.

An oily sheen about 2 km long could be seen on the water shortly after the accident. It is still unknown how much diesel, oil and other fuel reached the water or remains in the cargo at the bottom of the sea.

Given the potentially catastrophic impacts of a tanker or pipeline spill, and the lack of assurances that the regulatory process will protect communities from these risks, lifting the tanker moratorium to allow super tanker traffic off BC's fragile north coast and adding new pipelines across northern British Columbia causes very real concern to many British Columbians.

The existing oil tanker moratorium needs to be strengthened.

While the tanker ban has been upheld by governments of all political stripes since 1972, it is now under serious threat. British Columbians now face the serious possibility of hundreds of oil supertankers travelling through our dangerous inside coastal waters each year. **To put a stop to these supertankers, we need a legislated ban.**

9. What can you do?

Let the federal government, and all federal political parties know that you want a legislated ban on oil tankers in Dixon Entrance, Hecate Strait, and Queen Charlotte Sound. Contact them by mail or email at:

- Rt. Hon. Stephen Harper, Prime Minister, pm@pm.gc.ca
- Michael Ignatieff, Leader, Liberal Party of Canada, IgnatM@parl.gc.ca
- Hon. Jack Layton, Leader, NDP, LaytoJ@parl.gc.ca
- Gilles Duceppe, Leader, Bloc Québécois DucepG@parl.gc.ca

The mailing addresses for all these party leaders is:
House of Commons, Ottawa, K1A 0A6



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The information provided in these materials is for public education purposes only. If you have particular questions about a specific legal question, please contact one of West Coast's lawyers.

West Coast's law reform advocacy to strengthen the moratorium on oil tankers on BC's coast is made possible by generous support from the Law Foundation of British Columbia and the glasswaters foundation.

