

PROPOSED OIL TANKER MORATORIUM ACT – A BRIEF LOOK AT THE HISTORY OF THE MORATORIUM

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On 12 May 2017, the Government of Canada introduced Bill C-48, the proposed *Oil Tanker Moratorium Act*¹, in Parliament. This initiative follows up on the launch of the national Oceans Protection Plan in November 2016 and fulfils the Prime Minister’s commitment to formalize a crude oil tanker moratorium on British Columbia’s north coast. The broader plan aims to “improve marine safety and responsible shipping; protect Canada’s marine environment; and create new partnerships with Indigenous and coastal communities”.²

When the federal government talks about “formalizing” a crude oil tanker moratorium, it is helpful to review the historical background and the restrictions on oil tanker traffic that exist today – informal or otherwise. The status or need for an oil tanker moratorium on the West Coast has been a high profile topic in British Columbia for decades. This article reviews some of that contentious history to assist in understanding where we have been and where we may be heading.

1. A few facts about oil activity and tankers on the British Columbia coast

Oil tankers have been travelling along the

British Columbia coast since the 1930s. Transport Canada reports that, in 2015, there were about 197,513 departures and arrivals of vessels at British Columbia ports, with tankers accounting for about 1487 – about 0.75 per cent.³

Oil is shipped mostly through the ports in Vancouver, Prince Rupert, and Kitimat, and most shipments are to and from communities along the coast. Oil is carried by barges, container ships, ferries, and other types of commercial and private vessels.⁴

The first oil wells were drilled between 1913 to 1915 in the Queen Charlotte Basin at Tian Bay, on the west coast of Graham Island.⁵

2. How the proposed moratorium works

The proposed moratorium is designed to complement the existing Voluntary Tanker Exclusion Zone, which has been in place since 1985.⁶

The basic features of the proposed legislation are:

- Oil tankers carrying over 12,500 metric

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¹ Bill C-48, *An Act respecting the regulation of vessels that transport crude oil or persistent oil to or from ports or marine installations located along British Columbia’s north coast*, 1st Sess, 42nd Parl, 2017.

² Transport Canada, Press Release, “Government of Canada introduces *Oil Tanker Moratorium Act*” (12 May 2017).

³ Transport Canada, “Get the facts on oil tanker safety in Canada” (15 May 2017), online: <<http://www.tc.gc.ca/eng/marinesafety/facts-oil-tanker-safety-canada-4513.html#west-coast>>.

⁴ *Ibid.*

⁵ Ministry of Energy, Mines and Petroleum Resources, “Offshore Oil & Gas in BC: A Chronology of Activity”, online: <<http://www.empr.gov.bc.ca/Mining/Geoscience/MapPlace/thematicmaps/OffshoreMapGallery/Pages/chronologyofactivity.aspx>>.

⁶ *Supra* note 2.

tons of crude or persistent oils as cargo are prohibited from stopping, loading or unloading these oils at ports or marine installations in northern British Columbia.

- The proposed tanker moratorium applies to the northern coast of British Columbia from the northern tip of Vancouver Island to the Alaska border – specifically, north of 50°53'00" north latitude and west of 126°38'36" west longitude.
- Vessels carrying less than 12,500 metric tons of crude or persistent oil as cargo will continue to be permitted in the moratorium area so northern communities can receive shipments of heating oils and other products.
- The master of an oil tanker that can carry over 12 500 metric tons of oil in bulk in liquid form must file a pre-arrival report with the Minister of Transport before entering the moratorium area.
- The definition of crude oil mirrors the definition in the *International Convention for the Prevention of Pollution from Ships*.
- Persistent oils are listed in a schedule to the Act and include heavier products that are slow to dissipate, including: partially upgraded bitumen, synthetic crude oil, petroleum pitch, slack wax, and bunker C fuel oil.
- Refined petroleum products may be removed from or added to the list, based on science and environmental safety criteria.
- The Minister may exempt an oil tanker from the prohibition if it is “essential for the purpose of community or industry resupply or is otherwise in the public interest”.
- The remedies and penalties for contravention may include a fine up to \$5 million, imprisonment, detention

and sale of the vessel. Owners, directors and officers may be parties to an offence.

3. Current Federal Restrictions on Offshore Oil-related Activities

Two types of offshore oil-related activities that have been the focus of federal and provincial government attention and discussions related to moratoria: 1) oil and gas exploration, and 2) crude oil tanker traffic.

The federal government has through policy and executive order, imposed a *de facto* moratorium on oil and gas exploration off the British Columbia coast since 1972.

In 1972, the federal government also announced a moratorium on crude oil tanker traffic through the Dixon Entrance, Hecate Strait, and Queen Charlotte Sound, but it never implemented the moratorium through legislative instrument. The status of the moratorium has been a source of debate and confusion ever since. In law and in practice, the federal government allows and regulates the export, import or the shipment of oil to or from British Columbia ports.

The federal government has through agreement with the United States established a Voluntary Tanker Exclusion Zone that restricts the transit of oil tankers from Alaska to Washington, but that restriction is specific and narrow.

Further explanation follows.

a. Moratorium on oil and gas exploration, 1972

In 1972, the federal government announced a moratorium on oil and gas exploration off the British Columbia coast. It implemented the moratorium through policy by deciding to stop issuing any further exploration permits for the British Columbia offshore and suspending work obligations on existing permits. This approach imposed a *de facto* moratorium on those parts of the offshore under federal jurisdiction.⁷

In 1989, British Columbia announced it would not permit offshore exploration for at least 5 years. The federal government reaffirmed its

⁷ Lynne Myers & Jessica Finney, *Offshore Oil and Gas Development in British Columbia: Status of Provincial and Federal Moratoria*, 2004, Library of Parliament, Science and Technology Division, p 1. See also, Ministry of Energy, Mines and Petroleum Resources, Chronology, *supra* note 5.

policy and added that it would consider no offshore development until requested to do so by the B.C. government.⁸

The British Columbia initiated a review of its moratorium in 2002, and ended the provincial moratorium following that review. The Province then called for the federal government to review the federal moratorium, which led to a series of reviews and reports.⁹

b. Moratorium on Oil Tanker Traffic

There is some dispute over whether a federal moratorium on crude oil tanker traffic ever progressed past a policy announcement to reach effective status. Government reports, both federal and provincial, conflict on this point. However, no federal legislation establishes a federal moratorium and crude oil shipments are permissible and regulated in the normal course.

Several federal and provincial reports since 1972 refer to a moratorium on crude oil tanker traffic, for example:

- In a 1986 joint federal/provincial review of offshore exploration, the offshore moratoria were described as follows.

In 1972, the federal government imposed a moratorium to prevent crude oil tankers travelling through the Dixon Entrance, Hecate Strait and Queen Charlotte Sound enroute from the Trans-Alaska pipeline terminal at Valdez, Alaska. Subsequently, a federal Order-in-Council indefinitely relieved existing offshore exploration permit holders from their obligations to conduct exploratory drilling in these waters and prohibited any further drilling.

In 1981, the Province of British Columbia reinforced the moratorium when it declared an Inland Marine Zone. At the same time, an indefinite moratorium was placed on offshore exploration in Johnstone Strait south of Telegraph Cove, in the Straits of Georgia and Juan de Fuca. As of February 1986, all of these respective moratoria are still in effect.¹⁰

- The terms of reference for the federal 2003 Public Review Panel¹¹ and the concurrent Science Review Panel¹² state:

In 1972, the Government of Canada imposed a moratorium on crude oil tanker traffic through Dixon Entrance, Hecate Strait, and Queen Charlotte Sound due to concerns over the potential environmental impacts. The moratorium was subsequently extended to include oil and gas activities. This was followed by a similar prohibition by the Government of British Columbia.

- The terms of reference for a British Columbia 2002 scientific review panel describe the provincial perspective as follows:¹³

British Columbia has restricted offshore oil and gas activity since 1959, with the exception of a brief period from 1965 to 1966. The Province has issued three separate orders in council (1959, 1966 and 1981), reserving the seabed floor off the Queen Charlotte Islands and Vancouver Island to the Provincial Crown.

A federal moratorium has also been in place since 1972.

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ Report and Recommendation of the West Coast Offshore Exploration Review Panel 1986, Joint Review, Canada and British Columbia, p 9.

¹¹ Public Review Panel, *Report of the Public Review on the Government of Canada Moratorium on Oil and Gas Activities in the Queen Charlotte Region of British Columbia* (Ottawa: 29 October 2004). This report was commissioned by the federal government following a request for review from the BC government.

¹² The Royal Society of Canada, *Report of the Expert Panel on Science Issues Related to Oil and Gas Activities, Offshore British Columbia* (Ottawa: February 2004).

¹³ Scientific Review Panel, *British Columbia Offshore Hydrocarbon Development – Report of the Scientific Review Panel* (15 January 2002).

a) Voluntary Tanker Exclusion Zone, 1985

Following the completion of the Trans Alaska pipeline system in the 1970s, tankers transported crude oil from Alaska to ports along the West Coast of the United States. Routes were established in 1977 to respond to environmental risks. Those routes required the tankers to travel far to the west of the Queen Charlotte Islands and Vancouver Island.

Between 1982 and 1985, those routes were disputed because of the added cost. Canada and the United States studied the routes and risks, and settled on agreed routes.

In 1985, the federal government negotiated the Voluntary Tanker Exclusion Zone (TEZ) with the United States Coast Guard. The TEZ extends from the shores of British Columbia westward and was calculated based on the worst possible drift of a disabled tanker with a cargo versus the time required for help to arrive. Loaded oil tankers travelling from Alaska to Washington must travel west of the zone.¹⁴

Following discussions in 1988 involving the United States and Canadian Coast Guards and representatives from the United States Tanker industry user group, all agreed that the TEZ would be voluntarily adopted along the British Columbia coast.¹⁵

The TEZ does not apply to tankers travelling to or from Canadian ports.¹⁶

4. The new moratorium on oil tankers on the northern coast – where are we heading?

In November 2015, the Prime Minister

directed four federal ministers to work together to “formalize a moratorium on crude oil tanker traffic on British Columbia’s North Coast” (the “Proposed Moratorium”).¹⁷ The idea of a moratorium is not new, but the restriction in the proposed Act is. If enacted, the Act will resolve any confusion about the status of an oil tanker moratorium.

Prime Minister Trudeau said recently, “No country would find 173 billion barrels of oil in the ground and just leave them there”.¹⁸ While that statement demonstrates the federal government’s commitment to developing Canada’s oil resources, the Act creates a substantial logistical hurdle for that development.

The proposed Act defines a clear policy choice about where crude oil can be exported on the British Columbia coast – i.e. export only from the South Coast. That choice has profound implications for British Columbia and Canada economies, which both depend heavily on the export trade.

Restricting the options for export will add cost and complication to developing our oil resources. Is that cost worth the benefit relative to the risk? Are there other options to protect the northern coast? The analysis supporting the policy choice merits close examination to determine the best approach to serve Canada’s environmental and economic interests.

As this proposed Act proceeds through Parliament, we will undoubtedly hear more on this long-standing debate. ■

¹⁴ Transport Canada, “Safe routing and reporting for vessels” (15 May 2017), online: <<http://www.tc.gc.ca/eng/marinesafety/safe-routing-reporting-vessels-4516.html>>.

¹⁵ Canadian Coast Guard, “Information on the Voluntary Tanker Exclusion Zone”, online: <<http://www.ccg-gcc.gc.ca/e0003909>>.

¹⁶ *Supra* note 14.

¹⁷ Office of the Prime Minister, “Letter to the Minister of Fisheries” (Ottawa: November 2015), online: <<http://pm.gc.ca/eng/minister-fisheries-oceans-and-canadian-coast-guard-mandate-letter>>.

¹⁸ “Trudeau: No country would find 173 billion barrels of oil in the ground and leave them there” *CBC News* (10 March 2017), online: <<http://www.cbc.ca/news/world/trudeau-no-country-would-find-173-billion-barrels-of-oil-in-the-ground-and-leave-them-there-1.4019321>>.

The Proposed Moratorium Area

