



Council of the Haida Nation

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COUNCIL OF THE HAIDA NATION

**Submission to the Standing Committee on Transport, Infrastructure and
Communities in respect of the study of Canadian Transportation and Logistics
Strategy (Trade Corridors)**

November 20, 2018 | Peter Lantin, President

Introduction

My name is kil tlaats'gaa, Peter Lantin. I am the President and official spokesperson of the Haida Nation. We will begin with a brief context to our submissions.

The Haida Nation's territory includes the entirety of Haida Gwaii and the surrounding waters, including the entire Dixon Entrance, half of Hecate Strait, Queen Charlotte Sound halfway to Vancouver Island, and westward beyond the 200 nautical mile limit ("**Haida Territory**").¹

Haida Gwaii has supported our people and culture since time immemorial. The land, ocean and living creatures are essential for the health and well-being of Haida culture and citizens, as well as the citizens of Canada. "We came out of the Ocean ... all over Haida Gwaii ... we can point to and say this is where our ancestors came out of the ocean".²

Haida Gwaii must be managed to a higher standard of care with a lower threshold of risk for two reasons. First, we collaboratively manage much of Haida Gwaii with the federal and provincial governments. Second, Haida Gwaii is not subject to a treaty and we are in active litigation with the Governments of Canada and British Columbia in respect of Haida Gwaii.

Haida Gwaii's location puts us at risk of oil spills from vessels traversing adjacent to and through our territory. Our submissions will focus on two areas: first, the burden of risk posed by marine shipping, and second, recommendations to prevent this risk.

¹ Haida Nation Constitution at <http://www.haidanation.ca/wp-content/uploads/2017/07/Constitution-2017-05.pdf>.

² Gaaysiigang: An Ocean Forum for Haida Gwaii. http://www.haidanation.ca/wp-content/uploads/2017/03/Gaaysiigang_72.pdf ("Gaaysiigang"), at page 9.

The Haida Nation bears an unacceptable burden of risk posed by marine shipping under Canada's current regulatory framework.

- Haida Gwaii lies along major shipping routes from the ports of Prince Rupert, Kitimat, and Stewart, is close to the Great Circle route between North America and Asia, and the shipping route between the southern US and Alaska.
- Proposed liquefied natural gas (“LNG”) terminals and other trade expansion including the proposed Kinder Morgan pipeline, would result in increased shipping traffic through Haida territorial waters.
- Our concerns about the unacceptable burden of risk are not unfounded. Several large cargo vessels have come dangerously close to grounding and causing a major spill, including the *Simushir* in 2014, the *North Star* in 2015 and the *Prestige* earlier this year. These incidents demonstrate that vessels travel too close to Haida Gwaii and that rescue tugs are stationed too far away.

For the Haida Nation, prevention is priority.

- While the Haida Nation is collaborating with the Canadian Coast Guard to establish a Haida Gwaii response plan, the recent *Nathan E. Stewart* incident in Heiltsuk territory demonstrates that *any* response plan will be ineffective at cleaning up or preventing oil products from reaching the coastline. The very real possibility that our people might not be able to continue to rely upon our ocean is what drives us to ensure these catastrophes do not occur.
- We provide four preventative strategies.

First, Canada must implement a permanent moratorium on shipping oil products through Haida Gwaii and North Coast waters.

- Haida citizens have mandated, through the Haida Nation's legislative assemblies, a permanent moratorium on the transport of large quantities of all petroleum products through Haida Gwaii waters. We urge Canada to do the same.

- Canada must not only implement the *Oil Tanker Moratorium Act* but must expand the moratorium to include export of *all* fossil fuels – persistent and non-persistent oil products – through Haida Gwaii and North Coast waters.
- Management of shipping in Haida Gwaii waters has become a greater concern for the Haida Nation over the past few years due to expansion of northern BC ports and proposals to ship refined oil³, which would increase shipping traffic in our waters and the potential for serious accidents.

Second, Canada must introduce measures to establish a Safe Distance Offshore for existing shipping traffic.

- Since 2015, the Haida Nation has advocated for a risk mitigation zone of 50-100 nm off the west coast of Haida Gwaii. A similar objective was also adopted by Parks Canada and DFO in the final Gwaii Haanas Land-Sea-People Management Plan⁴.

Third, Canada must commit to dedicated ocean-going rescue towing vessels.

- Recent studies⁵ have shown that a towing vessel in northern locations will dramatically improve response times and success rates, and that the status quo requires vessels to transit at least 89 nm offshore from the west coast of Haida Gwaii to ensure a 99% likelihood of successful response.
- Yet Canada has only committed to *leasing* two rescue tugs over a three-year *trial* period and has not made any commitments for permanent vessels. Canada must implement longer-term solutions with at least two vessels in the north coast, and one permanently stationed on Haida Gwaii.

³ Eagle Spirit Energy (no public website available), Kitimat Clean (<http://www.kitimatclean.ca/>), and Pacific Future Energy (<http://www.pacificfutureenergy.com/>)

⁴ Objective 4.3, Target 2, of the management plan commits the Haida Nation, Parks Canada, and DFO work “with relevant agencies to encourage large vessels to transit sufficiently far offshore of Gwaii Haanas to ensure adequate response times and prevent accidents” (p.21).

⁵ Clear Seas Centre for Responsible Shipping. 2018. Vessel Drift and Response Analysis for Canada’s Pacific Coast. Available online here: https://clearseas.org/en/research_project/vessel-drift-response-analysis-canadas-pacific-coast/

Fourth, Canada must respect international obligations.

- We remind Canada that the collaborative management bodies established under Haida-Canada Agreements are available to *begin* implementing the *United Nations Declaration on the Rights of Indigenous Peoples* in a way that respects and implements reconciliation.

In summary, Canada's current regulatory framework for maritime trade does not address our concerns. We recommend that Canada:

- expand the oil tanker moratorium to include refined oil products;
- introduce measures to ensure vessels transit a safe distance offshore from Haida Gwaii; and
- commit to permanently station a rescue tow vessel on Haida Gwaii.

Thank you, Haawaa.

ADDENDUM

Other key shipping issues

- Some of the largest cruise vessels in the world that travel between Alaska and the lower 48 often come within 10 nm of Haida Gwaii's remote and pristine west coast.⁶
- Vessels also use Haida Gwaii waters as refuge simply to avoid paying fees at major ports of Vancouver and Prince Rupert. Sometimes vessels illegally entering the compulsory pilotage areas without a pilot on board. The Pacific Pilotage Authority is aware of this issue and continues to monitor activities, but more can be done.

Simushir

- The Russian Cargo Vessel, the Simushir, lost power 20 nm offshore and drifted to just over 5 nm from Haida Gwaii coastline.⁷
- Disaster was averted by a small CCG tug the *Gordon Reid* that was itself put in danger, breaking two towlines before using the ship's tie-up lines to slowly move the vessel from immediate harm.
- The only tug capable of moving the vessel to safety, the *Barbara Foss*, arrived 40 hours after the incident was reported.

Protect sensitive and vulnerable areas from shipping

- Protections need to be established for SGaan Kinghlas – Bowie Seamount Marine Protected Area and marine areas designated with the Province of BC under the Haida Gwaii Marine Plan or Land Use Plans.
- Draft shipping restrictions are currently being discussed with Transport Canada for SGaan Kinghlas – Bowie Seamount Marine Protected Area and the Marine Protected Area Network for the Northern Shelf Bioregion.

Studies that show successful rescue

⁶ Information retrieved by the Council of the Haida Nation from the Canadian Coast Guard Collaborative Situational Awareness Portal, available online here: <https://csap-pccs.ccg-gcc.gc.ca>

⁷ Council of the Haida Nation. 2015. Workshop Summary: Lessons from the Simushir May 12-13, 2015, Skidegate, Haida Gwaii. Available online, here: https://haidamarineplanning.com/wp-content/uploads/2016/08/CHN_Workshop_Summary_FINAL.pdf

- Clear Seas Centre for Responsible Shipping released a *Vessel Drift* study⁸ earlier this year that showed when a dedicated ocean-going rescue tug was to patrol Hecate Strait, vessels could only be as close as 40 nm offshore and have a high probability of rescue.

“Areas to be Avoided”

- In 2015, Alaska gained support from the International Maritime Organization (IMO) for an “Areas to be Avoided” designation that keeps vessels 50 nm away from the Aleutian Islands except for designated transit points.⁹
- We encourage the federal government to pursue international designations that would apply to all shipping classes similar to Alaska to complement regulatory measures such as the tanker moratorium and existing voluntary exclusion zone.

Federal-Haida Agreements

- The 1993 Gwaii Haanas Agreement, the 2010 Gwaii Haanas Marine Agreement, and the 2007 MOU for the SGaan Kinghlas (Bowie Seamount) establish bilateral governance structures between the Haida Nation and the federal government.
- These and other agreements all contain commitments to protect for future generations, rare and sensitive areas through collaborative management.
- Importantly, these agreements all contain the expectation from both the Haida Nation and the Crown that Haida Gwaii be managed to a *higher standard with a lower threshold of risk*. This higher standard of care extends to shipping activities.
- Gwaii Haanas Marine Area in southern Haida Gwaii has been called “one of the world’s ecological and cultural treasures” yet remains vulnerable to vessel grounding.

⁸ Clear Seas Centre for Responsible Shipping. 2018. Vessel Drift and Response Analysis for Canada’s Pacific Coast. Available online here: https://clearseas.org/en/research_project/vessel-drift-response-analysis-canadas-pacific-coast/

⁹ International Maritime Organization. 2014, Dec 5. Establishment of five areas to be avoided in the region of the Aleutian Islands. Submitted by the United States. Available online, here: <http://www.nepia.com/media/258601/IMO-NCSR-2-3-5-Adopt-the-Establishment-of-Five-Areas-to-be-Avoided.pdf>

Haida Gwaii and Fossil Fuel Dependence

- The Haida Nation is strongly opposed to transport of large quantities of petroleum products through Haida territorial waters.
- Haida Gwaii remains reliant upon the transportation of small-scale fossil fuels for the use of residents of Haida Gwaii. The Haida Nation does not oppose small-scale transportation of fossil fuels, as long as it is managed at a higher standard of care.
- Consistent with the expectation from the Haida Nation and the Crown outlined in Haida-Federal Agreements, Haida Gwaii should be managed to a higher standard of care with a lower threshold of risk. Transportation of large quantities of petroleum products through Haida territorial waters exceeds an acceptable threshold of risk.

Consultation with, and accommodation of, the Haida Nation's concerns about Export Projects with Shipping Components

- The Haida Nation's concerns have not been accommodated, let alone adequately consulted, in relation to environmental assessments for major oil and gas export projects.
- A large number of LNG projects that involve an increase in highly risky shipping traffic around Haida Gwaii have been subject to environmental assessments. In all cases, CHN was excluded from the consultation and accommodation process and no fulsome assessment of shipping impacts on Haida Gwaii, Haida Nation values, interests, Rights and Title was ever undertaken for these projects.
- This remains a major gap in the federal government's fiduciary duty and does not uphold the honour of the Crown nor the advanced state of recognition of Haida Title and Rights in Haida Gwaii.

TERMPOL

- CHN has engaged in the TERMPOL review for the Kitimat LNG Project. We have referenced several studies in a letter to the proponent of KLNG, Chevron, to assist in further informing the operational plans and mitigation measures for KLNG Project.
- As a result, the KLNG Project has committed to conducting a complete and detailed review of the Haida Marine Traditional Knowledge study, Protected Management Zones in the Haida Gwaii Marine Plan, the Gwaii Haanas Management Plan and the

SGaan Kinghalas-Bowie Seamount Draft Management Plan and also committed to incorporate that information into their operational plans and protocols.

- Canada should require the proponent to consider these plans in advance of any project decision. Since this has not occurred, aboriginal jurisprudence requires Transport Canada to take this information into account as they draft their TERMPOL report.
- We also look forward to being directly engaged in Canada's upcoming review of their TERMPOL process in order to address the Haida Nation's priority concerns, including those we outline here today.

OTHER RECOMMENDATIONS, OVER AND ABOVE THOSE ABOVE

RECOMMENDATION 5: Marine emergency response requires close engagement with local communities to determine appropriate courses of action.

- Any emergency response must follow the unified command decision structures outlined in the Pacific Places of Refuge Contingency Plan jointly developed by the Haida Nation and Transport Canada.
- Even in emergency situations, consultation and accommodation with the Haida Nation must occur.

RECOMMENDATION 6: Provide more information on vessel traffic

- The Haida Nation will be working with Transport Canada to test an enhanced version of the Coast Guard Maritime Awareness Information System that shows real-time vessel traffic.
- Currently, there is insufficient information available from Canada on historic and current vessel traffic to enable:
 - Open monitoring and reporting system on regional vessel activity;
 - Alerts about vessels transiting outside of the main shipping routes or nearby or within marine and terrestrial protected areas;
- Canada must ensure that this system will both:

- Enhance response capacity by creating a common operating picture with Canada in the event of an incident AND
- Ensure that the Haida Nation will have enough information to monitor and implement traffic measures endorsed by federal and provincial governments in marine plans.

RECOMMENDATION 7: Enhance baseline data on underwater noise and ecosystem values to understand regional and cumulative shipping impacts, related to aquatic invasive species, pollution, marine mammals and other priority issues.