SIERRA CLUB BC
301-2994 Douglas Street
Victoria, B.C. V8T 4N4
T (250) 386-5255
F (250) 386-4453
E info@sierraclub.bc.ca
W www.sierraclub.bc.ca

Submission to the Senate Committee Regarding Bill C-48, the *Oil Tanker Moratorium Act*

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Caitlyn Vernon, Campaigns Director
caitlyn@sierraclub.bc.ca
250-386-5255 ext 222

Thank you for the opportunity to comment regarding Bill C-48. This Sierra Club BC submission will outline:

(1) Sierra Club BC support for the Act, and our history in the region,
(2) Broad-based support for a legislated oil tanker ban,
(3) Unique values of BC's north coast that necessitate such an Oil Tanker Moratorium, and
(4) Areas in which this Act is already a compromise.

Sierra Club BC Support for Bill C-48

Sierra Club BC strongly supports Bill C-48 and applauds the federal government for introducing the *Oil Tanker Moratorium Act* for BC's north coast.

Sierra Club BC is a registered charity that has existed in British Columbia for 50 years. Our mandate is to defend B.C.'s wild places and species, within the urgent context of climate change. Our work, including efforts to support the north coast oil tanker moratorium, is based on direction from our BC-based board of directors and input from our 36,000 supporters.

Sierra Club BC involvement in the region dates back at least as far as the campaign for South Moresby that culminated in the 1988 creation of the Gwaii Haanas National Park Reserve and Haida Heritage Site, on Haida Gwaii, and the 1994 creation of Khutzeymateen Park on the north coast.

For over two decades, Sierra Club BC has been working to protect the ecosystems of the Great Bear Rainforest on BC's north and central coast. These efforts contributed to the globally-recognized and award-winning Great Bear Rainforest agreements in 2016, as well as support for Coastal First Nations in establishing a Coastal Guardian Watchmen Network to monitor their territories. Since 2010, Sierra Club BC has been highlighting the many ways in which a healthy marine ecosystem is necessary for the ecological integrity – and associated human well-being – of coastal wildlife and rainforest. We continue to engage in implementation of the Great Bear Rainforest agreements.

Broad-based support for the Act

Many diverse voices have been calling for years for BC's north coast to be permanently protected from oil tankers. In particular, Coastal First Nations, an alliance of nine First Nations in the region, declared a ban on crude oil tankers in their territorial waters, in 2010. Multiple northern municipalities and regional districts have taken a position opposing oil tanker traffic, and the Union of B.C. Municipalities has passed a resolution calling on the federal government to legislate an oil tanker ban on B.C.'s north coast. The Union of B.C. Indian Chiefs has publicly supported Bill C-48.[i]

Labour organizations including the United Fishermen and Allied Workers' Union – Unifor, the Canadian Union of Postal Workers, and the Prince Rupert District Teachers' Union have supported Bill C-48.[ii] More than 30 community and environmental groups across northern BC and throughout Canada have supported a legislated Pacific north coast oil tanker ban and applauded Bill C-48.[iii]

Over 12,000 Canadians signed a House of Commons petition calling for a legislated oil tanker ban on the Pacific north coast, which was initiated in 2018 by Marilyn Slett, president of Coastal First Nations and elected Chief of the Heiltsuk Tribal Council.[iv]

In the groundswell of public opposition to Enbridge's Northern Gateway pipeline and tankers project, numerous examples illustrate the broad-based support for a north coast tanker ban. As of June 2013, 160 First Nations, 31 municipal governments, 2 regional districts, the Union of B.C. Municipalities, 6 unions and over 250,000 individual public actions had openly expressed opposition to the Enbridge Northern Gateway pipeline and tankers project.[v] Over $600,000 was raised in support of the indigenous legal challenges to protect the coast from oil tankers, through the involvement of 4809 donors, 140 businesses and over 75 grassroots-organized community events.[vi]

Further, many voices throughout the outpouring of concern and financial donations to the Heiltsuk Nation in the aftermath of the Nathan E. Stewart spill in 2016 pointed to the need for a permanent tanker ban to prevent such disasters in the future.

It is worth noting that the broad-based support is for a *permanent* tanker ban. It would be at odds with the intention of the legislation to amend it to include a review clause after some period of time. To protect the ecological values of the region, and the culture and economies that depend on a healthy coast, requires passing the legislation without any such amendment.

Photos: Andrew S. Wright

Unique values of BC's North Coast

The diversity of voices calling for a permanent oil tanker ban for BC's north coast is in recognition of the unique rich marine ecosystems in the region that support communities, indigenous cultures, and livelihoods including commercial fishing and wilderness tourism. Coastal communities and economy depend on an unspoiled marine environment.

Numerous scientific studies have highlighted the abundant fish, shellfish, marine mammal and bird species in the region. Fisheries and Oceans Canada classifies close to half of the area as "Ecologically or Biologically Significant Areas," according to criteria adopted by the Convention on Biological Diversity.[vii] In addition the region is home to several globally unique – and highly fragile - ancient sponge reefs, estimated to be 9,000 years old and once thought to be extinct worldwide.[viii]

Indeed the ecologically rich and world-renowned Great Bear Rainforest also depends on a healthy marine environment. On BC's north coast, land and sea are intricately connected. Spirit bears that live nowhere else on earth depend on salmon, coastal wolves swim across open ocean to hunt seals, and trees grow faster in years with good salmon runs. The interconnectivity is such that an oil spill in the marine environment would seriously and negatively impact land-based wildlife and forested ecosystems, and the jobs these support.

Photo: Andrew S. Wright

Coastal temperate rainforests have never covered more than 0.5% of the planet's land base. The majority has been logged, around the world. The Great Bear Rainforest is the world's largest remaining intact coastal temperate rainforest.

An oil spill would threaten to undo all the innovative and long-term forest conservation and community economic development work environmental groups, First Nations, industry, and others, including the B.C. government, have accomplished over the last two decades.

British Columbians and the world rallied to stop unsustainable industrial logging in the region, and celebrated when a commitment to the Great Bear Rainforest's long-term conservation was won in 2006. The spirit bears, thousand-year-old trees, Indigenous cultures, and rich waterways inspired British Columbians, Canadians, and people around the world. The Great Bear Rainforest became a household name.

As a result of the Great Bear Rainforest government-to-government agreements – many years in the making and announced in 2006 - new protected areas were established on the Central Coast, North Coast, and Haida Gwaii. First Nations in the region entered into Reconciliation Protocols with the Province, outlining resource revenue sharing arrangement and creating a more collaborative approach to land and resource decision-making. Lighter-touch forestry, or ecosystem-based management (EBM), is being implemented in the region.

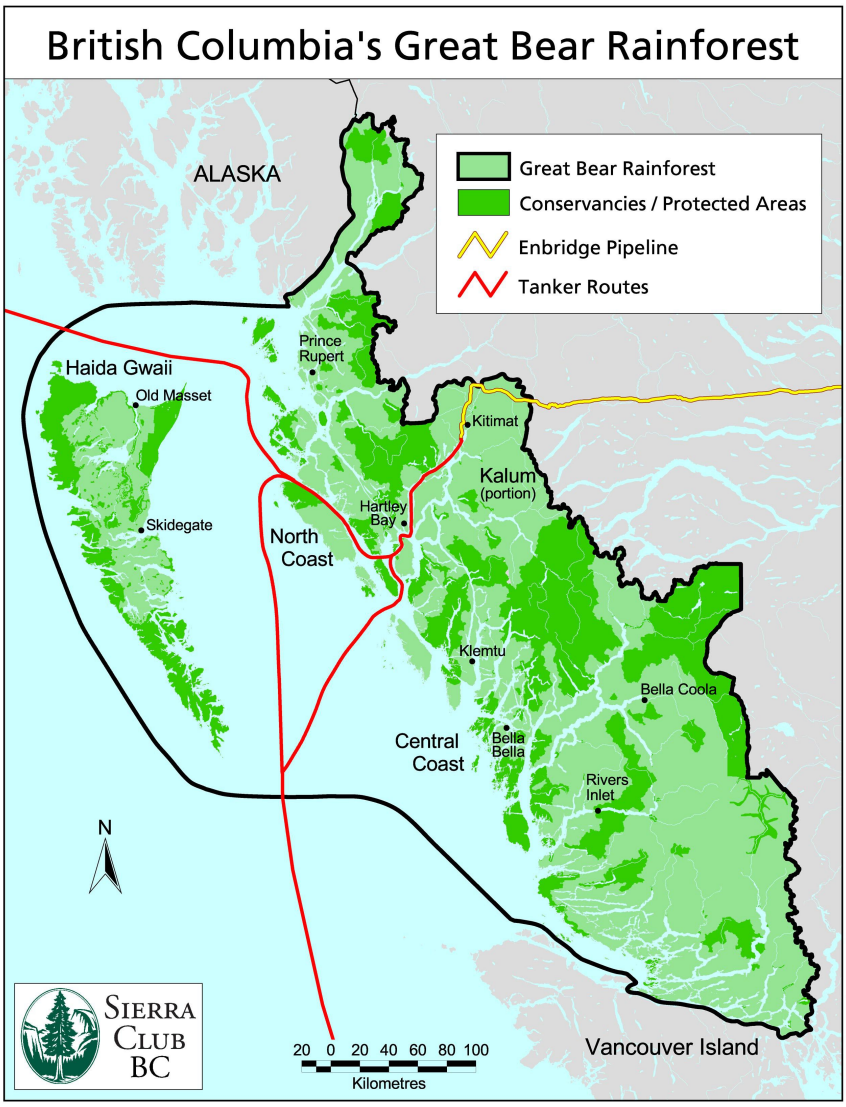
The Great Bear Rainforest agreements resulted in $120 million in conservation financing, to support the transition to a conservation economy. This financial investment included $30 million in federal funding, $30 million in provincial funding, and $60 million in private funding.

Of the $30 million in federal funding contributed to Coast Funds, the organization established to administer the investment, to date that money has been used to generate $286M in direct investment in region (and $100M remaining in Coast Funds). That is a 950% return on the initial federal investment. Additionally, this investment has led to the creation of over 100 new businesses and over 100 new permanent jobs. Those businesses alone have generated over $85M in tax revenue.[ix]

The B.C. government's commitment promised to preserve the Great Bear Rainforest and enhance the well-being of communities that live within, and depend on, it. However, that conservation agreement and the associated economic benefits for coastal communities would be jeopardized by an oil spill if Bill C-48 is not passed. Where even the trees are nourished by salmon, what happens in the marine environment will impact the forest. All evidence shows that if oil tankers are allowed to transit these waters, it's not a question of if there is an oil spill, but when. And that over 85% of the spill is impossible to clean-up, a statistic based on parts of the world more accessible and less prone to extreme weather than BC's north coast.

Photo: Cristina Mittermeier, iLCP

The following map was produced in 2012 to illustrate how a spill from oil tankers would impact protected areas in the Great Bear Rainforest.



Areas in which the Act is already a compromise

Some Senators have been calling for a 'compromise' such as a northern corridor, however the Act is already a compromise. We strongly welcome and support Bill C-48, while recognizing that what we have been asking for over the years would go further. Any suggestion of further stripping away the coastal protections in the Act is not a compromise but rather defeats the purpose of the legislation.

What follows are the areas in which we have lobbied to strengthen the bill, over the years.

(a) Prevent supertankers from shipping lighter refined oil products in the region

There are currently two proposals for oil refineries and related supertankers carrying refined oil on BC's north coast that have entered the federal environmental assessment process: the Kitimat Clean Refinery Project and the Pacific Future Energy Refinery Project. The economic viability of such refinery proposals have been met with skepticism. However, the protection of BC's north coast from oil tankers should not be left to market conditions; such protection should be ensured by oil tanker ban legislation that comprehensively guards against oil spill risks from tankers. The oil tanker ban's rationale of protecting the region's ecosystems, communities and economy from the risk of oil spills applies equally to tankers carrying refined and crude oil. Thus, there is a need for a clear and strong prohibition that applies to bulk shipments of all types of oil products. Canada explicitly notes that its approach to the oil tanker ban will not include refined oil products such as gasoline, jet fuel and propane. These are the types of products that the existing refinery proposals intend to produce and export through BC's north coast waters via supertanker. For example, Kitimat Clean Ltd. proposes to refine bitumen into products including gasoline, jet fuel and propane and export those products on Very Large Crude Carrier tankers through Douglas Channel. Since Canada's proposed approach would not apply the oil tanker ban to these types of refined oil products, it would not prevent Very Large Crude Carrier tankers filled with gasoline, jet fuel or other such products from entering and exiting marine terminals on BC's north coast.[x]

Further, the oil tanker ban would not apply to refined oil products classed as "non-persistent", which would include at least some of the fuel products currently transported by petroleum tank barges. Consequently, Canada's proposed approach to the oil tanker ban would clearly allow petroleum tank barge shipments to continue on BC's north coast.[xi]

While locals had been raising concerns for years, the issue of existing petroleum tank barges plying BC's north coast rose to national prominence in autumn 2016 with the grounding of the tug Nathan E. Stewart, which was transporting the (fortunately) empty fuel barge DBL 55. The sinking of the tug spilled over 100,000 litres of diesel and over 2,000 litres of industrial lubricants into the ocean, causing shellfish closures in the area. The tug sat on the sea floor for over a month before it was finally removed by a giant crane in November 2016. The incident has been called an "environmental disaster" by Chief Marilyn Slett of the Heiltsuk Nation, and the impacts could have been exponentially worse had the oil tank barge transported by the Nathan E. Stewart been fully loaded with a typical cargo of refined petroleum products.[xii]

The Heiltsuk Nation has described the spill as "a catastrophic injury to our food sources, culture, and economy," highlighting how the impacts of a spill include loss of commercial harvesting of marine resources and loss of Aboriginal rights relating to food, as well as impacts related to the social and ceremonial importance of marine resources.[xiii]

This incident illustrates the environmental, economic and cultural damage that can result from a spill of refined petroleum products. There is no real way to mitigate the risk or the damage caused by a large spill of any product under typical north coast conditions of poor weather, remote locations and with sensitive areas nearby.

For these reasons, Sierra Club BC has submitted that the Act be extended to include refined oil products.

(b) Decrease the tonnage threshold

As a matter of law, the crude oil tanker ban proposed by the federal government would not actually ban crude oil tankers. Rather, Canada's approach would prohibit vessels, including oil tankers, from entering or exiting ports and marine installations with a cargo of more than 12,500 tonnes of crude and persistent oil. In other words, under Canada's proposed approach it would be legally permissible for tankers to export or import smaller cargos of crude oil in the oil tanker ban region, provided that each vessel stayed below the 12,500-tonne threshold. This raises the question of whether the threshold is strict enough to actually deter proponents from introducing large project proposals that would significantly increase marine shipments of crude oil in the region.[xiv]

Further, Canada's proposed approach to the oil tanker ban would not prohibit existing petroleum tank barge shipments. Canada has proposed that the oil tanker ban only prohibit shipments larger than 12,500 tonnes, in order to ensure that no current shipments of oil products are affected. The existing petroleum tank barge shipments – such as the Nathan E. Stewart that ran aground in Heiltsuk territory - fall under the 12,500-tonne threshold and thus would not be captured by the ban.

In Sierra Club BC's view, the oil tanker ban should apply to such petroleum tank barges, which are substantially larger than the vessels shipping fuel to coastal communities in the region.
Based on the Transport Canada report 'Community and industry resupply of oil on the North Coast of British Columbia', fuel barges for resupply on B.C.'s north coast have a cargo capacity ranging from 1,600 to 3,200 tons.[xv] Thus a 3,200 tonne threshold would allow community fuel shipments to continue, while prohibiting the larger tank barge shipments that currently pass through the region in transit between Alaska and Washington State.

For these reasons, Sierra Club BC has submitted that the oil tanker ban should prohibit the transport of more than 3,200 tonnes of oil, with oil being defined to include any crude or refined oil products.

(c) Expand the geographic scope

Canada has proposed that the ban apply only to entry and exit from ports and marine installations in the region, not to vessels that pass through the region without stopping. The existing petroleum tank barges that pass through BC's north coast region in transit between Alaska and Washington State do not stop at ports on BC's north coast, thus they would not be impacted by such a ban.[xvi] Such shipments could instead be consolidated into tankers travelling outside the Voluntary Tanker Exclusion Zone, well off BC's coast, and then transferred to smaller vessels for resupply once they reach Southeast Alaskan communities.

Sierra Club BC has submitted that Bill C-48 be modified to prohibit vessels transporting more than 3,200 tonnes of oil from the entire geographic area of Hecate Straight, Dixon Entrance and Queen Charlotte Sound.

(d) Place limitations on Ministerial Exemption

The current exemption provision in the Act is so broad as to create uncertainty that it may be used in ways that counter the intention of the Act. Sierra Club BC has supported the recommendations from West Coast Environmental Law Association to limit the use of the exemption power to emergency circumstances, and impose a one-year expiry on exemption orders with the ability to order additional one-year extensions as necessary.

Conclusion

In conclusion, Sierra Club BC commends the federal government for legislating an oil tanker ban on BC's north coast, and encourages the Senate to pass Bill C-48. The legislation achieves the bare minimum needed to protect the ecosystems, communities, cultures and livelihoods in the region. It already represents a compromise, as it doesn't go as far as requested regarding geographic scope, tonnage threshold, inclusion of refined oil, and limits on the Ministerial exemption. Stripping away any of its protections would not be a compromise; it would defeat the purpose of the legislation. In recognition of the unique global importance of the Great Bear Rainforest region, and the broad-based support for a permanent oil tanker moratorium, we encourage the Senate pass Bill C-48 without any amendments.

Photo: Andrew S. Wright

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[i] Union of BC Indian Chiefs (with multiple groups), "Letter Re: Support for Bill C-48" (October 3, 2017), online: https://www.wcel.org/sites/default/files/publications/2017-10-03-billc-48-openletter-final.pdf ["Bill C-48 Support Letter"].

[ii] Bill C-48 Support Letter, *supra*.

[iii] *Ibid*; "Letter Re: Commitment to introduce legislated ban on oil tanker traffic on British Columbia's north coast" (November 13, 2015), online: https://www.wcel.org/sites/default/files/old/files/publications/201511_tanker_ban_open_letter.pdf

[iv] *Petition E-1601* (March 2018), online: https://petitions.ourcommons.ca/en/Petition/Details?Petition=e-1601

[v] Sierra Club BC media backgrounder, June 14, 2013 http://sierraclub.bc.ca/wp-content/uploads/Our-Final-Argument-Media-Backgrounder-June-14-2013.pdf

[vi] Pull Together, a joint initiative of Sierra Club BC and RAVEN Trust

[vii] West Coast Environmental Law Association https://www.wcel.org/sites/default/files/publications/KeepingOurCoastClean.pdf

[viii] Fisheries and Oceans Canada press release, February 16, 2017 http://www.marketwired.com/press-release/protecting-jurassic-period-glass-sponge-reefs-another-step-towards-canadas-marine-conservation-2196764.htm

[ix] https://coastfunds.ca/ For more information contact Laura Hope, Communications Manager, laura@coastfunds.ca.

[x] Excerpt from West Coast Environmental Law Association: Will the Pacific North Coast Oil Tanker Ban Hold Water? https://www.wcel.org/sites/default/files/old/files/publications/2017-01-30-WillTheOilTankerBanHoldWater-WCEL-EvaluationOnProposedLegislation-FINAL.pdf

[xi] Excerpt from West Coast Environmental Law Association: Will the Pacific North Coast Oil Tanker Ban Hold Water? https://www.wcel.org/sites/default/files/old/files/publications/2017-01-30-WillTheOilTankerBanHoldWater-WCEL-EvaluationOnProposedLegislation-FINAL.pdf

[xii] Excerpt from West Coast Environmental Law Association: Will the Pacific North Coast Oil Tanker Ban Hold Water? https://www.wcel.org/sites/default/files/old/files/publications/2017-01-30-WillTheOilTankerBanHoldWater-WCEL-EvaluationOnProposedLegislation-FINAL.pdf

[xiii] Chief Councillor Marilyn Slett and Councillor Jaimie Harris, Heiltsuk Nation https://thetyee.ca/Opinion/2017/08/30/About-World-Class-Spill-Response/

[xiv] Excerpt from West Coast Environmental Law Association: Will the Pacific North Coast Oil Tanker Ban Hold Water? https://www.wcel.org/sites/default/files/old/files/publications/2017-01-30-WillTheOilTankerBanHoldWater-WCEL-EvaluationOnProposedLegislation-FINAL.pdf

[xv] Transport Canada: Community and Industry Resupply of Oil on the North Coast of British Columbia https://www.tc.gc.ca/eng/marinesafety/community-industry-resupply-oil-north-coast-british-columbia.html

[xvi] Excerpt from West Coast Environmental Law Association: Will the Pacific North Coast Oil Tanker Ban Hold Water? https://www.wcel.org/sites/default/files/old/files/publications/2017-01-30-WillTheOilTankerBanHoldWater-WCEL-EvaluationOnProposedLegislation-FINAL.pdf