

## THE SALISH SEA, IN BC, CANADA SHOULD BE DESIGNATED AS A PSSA

In the Canadian Federal response to a proposal for the PSSA designation for the Salish Sea was the following statement:

“ a PSSA designation for the Salish Sea is not the appropriate approach as it would imply that A PSSA designation for the Salish Sea would be decided by IMO’S 170 Member States to waters that fall under the jurisdiction of Canada and the US”

Given that in the Salish Sea, US military operations are encroaching, Kinder Morgan oil pipe line and tanker traffic is possibly expanding multifold, and LNG Projects proliferating, senior levels of government have been remiss in not fulfilling their responsibilities, under their jurisdictions, towards the sensitivity of the Salish Sea.

The Salish Sea appears to fulfill many of the criteria in the new IMO criteria for the designation of PSSAs such as the following:

1.3. Areas important for the conservation of biological diversity as well as other areas with high ecological, cultural, historical/archaeological, socio-economic or scientific significance.

4.1 An area that could be at risk from international shipping activities. Type and quantity of substances on board, and cargo, ... that would be harmful if released into the sea

4.4.5 An area that may have an exceptional variety of species or genetic diversity or includes highly varied ecosystems, habitats, and communities.

4.4.7 An area that may be a critical spawning or breeding ground or nursery area for marine species which may spend the rest of their life-cycle elsewhere, or is recognized as migratory routes for fish, birds, mammals, or invertebrates.

4.4.13 An area that is of particular importance for the support of traditional subsistence or food production activities or for the protection of the cultural resources of the local human populations.

6.2 **consideration** should also be given to the potential for the area to be listed on the World Heritage List, declared a Biosphere Reserve, or included on a list of areas of international, regional, or national importance.

Currently. proposals, in the Salish Sea, for a Marine Protected Area, have been submitted and an initiative for a Salish Sea Biosphere Reserve is in progress.

Municipalities and Regional Districts, and indigenous communitywide be more aware, than senior level governments, of current and future impacts of developments on the Salish Sea.

Unfortunately, legitimate concerns of First Nations, and those of municipal and regional governments have often been ignored by senior levels of governments.

Since the governments of Canada and the US may have reneged on their obligations under the IMO, an appropriate approach would be for local municipal and indigenous communities to continue to work with the IMO and perhaps invite an IMO delegation to visit the Salish Sea.

## BACKGROUND EXCERPTS

### UN CONVENTION ON THE LAW OF THE SEAS (UNCLOS)

Canada signed July 29 1994 ratified November 2003

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Article 145 Protection of the marine environment Necessary measures shall be taken in accordance with this Convention with respect to activities in the Area to ensure effective protection for the marine environment from harmful effects which may arise from such activities. To this end the Authority shall adopt appropriate rules, regulations and procedures for inter alia:

(a) the prevention, reduction and control of pollution and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment, particular attention being paid to the need for protection from harmful effects of such activities as drilling, dredging, excavation, disposal of waste, construction and operation or maintenance of installations, pipelines and other devices related to such activities;

#### Xii Protection and of the Marine Environment section 1. General Provisions

Article 192 General obligation States have the obligation to protect and preserve the marine environment.

Article 193 Sovereign right of States to exploit their natural resources States have the sovereign right to exploit their natural resources pursuant to their environmental policies and in accordance with their duty to protect and preserve the marine environment.

Article 194 Measures to prevent, reduce and control pollution of the marine environment 1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection. 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.

Article 195 Duty not to transfer damage or hazards or transform one type of pollution into another in taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.

1995 AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF 10 DECEMBER 1982 RELATING TO THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Preamble: Conscious of the need to avoid adverse impacts on the marine environment, preserve biodiversity, maintain the integrity of marine ecosystems and minimize the risk of long-term or irreversible effects of fishing operations,

Article 2 Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

Article 3 Application.

Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

Part ii Conservation and Management of Straddling Fish Stocks and highly migratory fish stocks

Article 5 General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

- (a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum

Article 6c Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

#### OCEANS ACT:

**Article 2.1** For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the Constitution Act, 1982.

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#### **Principles of strategy: The national strategy will be based on the principles of**

- **(a)** sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;
  - **(b)** the integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and
- (c)** the precautionary approach, that is, erring on the side of caution.