

Arctic Oil: Canada's Chance to Get it Right

SSHRC Knowledge Synthesis Report

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I. Key Messages – One Page Summary

Oil was found in Canada's Arctic as early as 1789. The first claims were staked in 1914; since then, oil and gas interest in the region has waxed and waned depending on global prices, government policies and Indigenous land claims. Oil and gas have been discovered in the Mackenzie River Delta, the Beaufort Sea and around the High Arctic islands, though the fields are scattered and difficult to access. Climatic conditions and a lack of infrastructure pose additional challenges.

With present prices, no oil or gas activity is taking place in Canada's Arctic. This pause in development puts the Canadian government in a perfect position to create informed, carefully considered policies for when activity recommences. This report recommends the following “no regret policies” that will serve Canada's interests, even in the absence of renewed oil and gas activity in the Arctic:

- **Resolve international legal disputes:** Canada has four international legal disputes in the Arctic, and while these are long-standing disputes, they should be easy to solve through diplomacy. Working with neighbouring countries to solve the Hans Island dispute, the Lincoln and Beaufort Sea boundary disputes, and the dispute over the status of the Northwest Passage would help provide certainty concerning the applicability of Canadian law—including safety and pollution prevention regulations, exploration licenses, insurance and liability regimes, royalties, etc.—across all of Canada's Arctic.
- **Improve international environmental instruments:** The Arctic ecosystem is fragile and threatened, and steps must be taken to ensure its safety. Both an oil spill prevention agreement and a ban on the use of high sulphur fuel oil for shipping are needed. Protecting the environment will help to gain social license for resource projects.
- **Adopt new domestic laws and regulations:** Although some issues cannot be solved unilaterally, new domestic laws and regulations can protect Canadian interests in the Arctic and create momentum for the negotiation of international agreements. The creation of traffic separation schemes and meaningful marine protected areas, lifting liability caps and always requiring a same-season relief well capability—would all serve Canada well and encourage other countries to follow.

All of the above recommendations, which are based on existing knowledge, are necessary to enable safe and efficient oil and gas activity to recommence in Canada's Arctic—if and when prices rise sufficiently to offset the high costs of Arctic operations. These recommendations would protect the environment and the interests of Arctic Indigenous peoples, increasing the likelihood of projects obtaining the social license needed to proceed.

II. Executive Summary

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Resolve International Legal Disputes

Canada has four international legal disputes in the Arctic, all of which create uncertainty for oil companies. The easiest to resolve should be that of tiny Hans Island, located halfway between Ellesmere Island and northwest Greenland. In 1973, when the maritime boundary between Canada and Greenland was being drawn, negotiators discovered a difference of opinion over the island and, instead of resolving it, chose to work around it. As a result, the maritime boundary stops at the south shore of Hans Island and continues again from the north shore, leaving the island itself as the only disputed land in the entire Arctic. This dispute has no implications for the location of the maritime boundary between Canada and Greenland, nor for Canadian and Danish rights elsewhere. This irrelevance should make it easy to resolve, with one option being to draw a straight line across the island from the maritime boundary on one side to the maritime boundary on the other, giving each country approximately half of the land.

Canada's Arctic maritime boundary disputes should also be easy to resolve. The Beaufort Sea dispute between Canada and the United States turns on the interpretation of an 1825 Treaty, and specifically, whether the line used in that treaty—the 141st W meridian—applies offshore. The US argues that it does not, and that the 'equidistance principle' applies instead. However, the recent extension of coastal state rights beyond 200 nautical miles from shore, over the so-called "extended continental shelf", creates a situation where each country stands to gain from the other's preferred approach. For this reason, resolution could be as simple as sharing the disputed area equally.

The Lincoln Sea dispute between Canada and Denmark is simply a case of an unfinished job. In 2012, a tentative agreement was reached, with the only remaining task being the negotiation of a joint management regime for any straddling hydrocarbon deposits. This regime has to be negotiated with the Greenland government, which has responsibility over natural resources, before a treaty can be ratified with the Danish government.

Finally, Canada must resolve its dispute with the US over the status of the Northwest Passage. While Canada considers the Passage to be 'internal waters', the US maintains that it is an 'international strait' passing through Canada's 'territorial waters' and ships and aircraft from all countries have the right to uninterrupted 'transit passage'. With climate change increasing

accessibility for ships of all kinds, it is now in the interests of both Canada and the US to come to an agreement—so as to provide a clear legal basis for providing security and regulating ship safety and environmental protection. Canada should seek an agreement that both protects the US's concern for freedom of the seas and recognizes Canada's interests as the coastal state.

Although there is not yet any dispute in the Central Arctic Ocean, it is important that Canada file the Arctic portion of its submission to the Commission on the Limits of the Continental Shelf—exactly as that submission was prepared by government experts before then prime minister Stephen Harper intervened in 2013. Canada has no tenable claim to the North Pole, which lies on the Danish side of the 'equidistance line' north of Ellesmere Island and Greenland. Nor is any further science need to extend the Canadian submission northwards in advance of the almost inevitable boundary negotiations with Russia. By filing the submission as prepared, Canada will help to keep Arctic international relations grounded in international law, and provide legal certainty to any companies interested in seabed resources in the Central Arctic Ocean.

Improve international environmental instruments

Offshore oil and gas activity necessarily involves shipping for surveying, drilling and transportation. The Arctic is a dangerous place for shipping, due to sea-ice and icebergs, extreme weather, poor charts, limited infrastructure and services, and sheer remoteness. The current pause in activity provides an opportune moment for the negotiation of international agreements that will make Arctic oil and gas projects safer, and thus help to secure social license.

Oil Spill Prevention Agreement: Although the Arctic Council states have concluded an Agreement on Oil Spill Preparedness and Response, a further agreement is needed on the *prevention* of oil spills. Prevention avoids damage and is more efficient than attempted clean-ups. A meaningful Arctic Oil Spill Prevention Agreement would require states to lift liability caps and ensure that companies are capable of drilling a 'relief well' during the same season.

Ban Heavy Fuel Oil in the Arctic: Heavy fuel oil (HFO) poses a major threat to the Arctic environment. A spill of heavy fuel oil, which emulsifies in the water, would lead to the coating of marine life in oil, or its poisoning after ingestion. The burning of HFO produces particulates ("black carbon") that reduce the reflectivity of snow and ice and thus accelerate climate change. Although there is currently no ban on HFO in Arctic waters, reducing HFO emissions might be the most immediate way to slow climate change. Canada should seek an international ban on HFO in the Arctic, and adopt an immediate ban in its own Arctic waters.

Adopt new domestic laws and regulations

Create Traffic Separation Schemes through the Northwest Passage: Traffic Separation Schemes (TSSs) are employed in areas that are challenging to navigate, normally due to a high density of traffic. Canada does not presently have TSSs in the Arctic, but will need them as shipping activity increases.

Create meaningful Marine Protected Areas: Canada needs to create meaningful Marine Protected Areas (MPAs) where resource development and regular shipping are not allowed.

Reintroduce the same-season relief well requirement: In 2011, the National Energy Board made it possible for companies to avoid the same-season relief well requirement by adopting alternative measures. Although the same-season relief well requirement can be costly, cost reductions should not be obtained at the price of greater environmental risk.

Lift liability caps: Liability caps externalize some of the costs of Arctic oil and gas and are thus a form of public subsidy to oil and gas companies. They should be lifted substantially or eliminated entirely.

All of the above recommendations, which are based on existing knowledge, are necessary to enable safe and efficient oil and gas activity to recommence in Canada's Arctic—if and when prices rise sufficiently to offset the high costs of Arctic operations. These recommendations would protect the environment and the interests of Arctic Indigenous peoples, increasing the likelihood of projects obtaining the social license needed to proceed.