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# IN BRIEF

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## Offshore Oil and Gas Development in British Columbia: Status of Provincial and Federal Moratoria

### PROVINCIAL GOVERNMENT

In 2001, the newly elected British Columbia government announced a policy decision to reassess the provincial moratorium on offshore oil and gas development that had been imposed following the *Exxon Valdez* accident in 1989. Increased reserve estimates, growing B.C. energy demand and the rising price of natural gas were all considerations that prompted the policy change. The first step in this review was to establish a scientific panel to advise the government on matters related to the following four specific areas:

- the scientific and technological considerations relevant to offshore oil and gas exploration, development and production;
- further research studies that should be undertaken to advance the “state of knowledge” on these considerations;
- any specific government actions that should be taken prior to a decision on whether to remove the current moratorium; and
- any specific conditions or parameters that should be established as part of a government decision to remove the moratorium.

The panel’s report was released in January 2002. It concluded that, “while there are certainly gaps in knowledge and needs for intensification of research and a continuing commitment to baseline and long-term monitoring, these do not preclude a decision on the moratorium. There is no inherent or fundamental inadequacy of the science or technology, properly applied in an appropriate regulatory framework, to justify retention of the B.C. moratorium.”<sup>(1)</sup>

The B.C. government has, in effect, ended the moratorium simply by changing its policy. In the February 2003 Speech from the Throne, the government announced that, by 2010, it wanted to see “an offshore oil and gas industry that is up and running, environmentally sound, and booming with job creation.”

Following that announcement, the B.C. government set up an Offshore Oil and Gas Team<sup>(2)</sup> to enable offshore oil and gas development in British Columbia. In May 2003, the Team released an action plan that called for seismic exploration to begin by 2005. This deadline, however, is most unlikely to be met, as it is dependent on first resolving other significant issues, including the conclusion of jurisdictional and regulatory agreements with the federal government and First Nations in draft form by March 2004. That important deadline has already been missed. At the time that the B.C. action plan was released, the provincial Energy and Mines Minister was quoted as saying that he hoped that the goals would be attainable but that he did not know whether they were realistic.<sup>(3)</sup> In retrospect, they were not.

### FEDERAL GOVERNMENT

In 1972, the federal government made a policy decision to stop issuing exploration permits for the B.C. offshore and to suspend all work obligations on existing permits. In effect, this decision imposed a moratorium on those parts of the offshore under federal jurisdiction. When British Columbia announced its own moratorium in 1989, the federal government reaffirmed its policy and announced that it would not consider any offshore development until requested to do so by the B.C. government. That request came with the 2002 lifting of the B.C. moratorium.

In response to the change in B.C. policy, the federal government announced its own review process to help Cabinet reach a decision as to whether to lift the

federal moratorium. The goal is to complete the review in 2004. The process has involved appointing panels to identify science gaps relating to possible oil and gas development in the B.C. offshore area, and to hear the views of the public in general and Aboriginal people in particular regarding whether or not the federal moratorium should be lifted for selected areas.<sup>(4)</sup>

### **A. Public Review Panel**

On 15 May 2003, the Minister of Natural Resources Canada (NRCan) announced the appointment of Roland Priddle as the head of the Public Review Panel (PRP). Mr. Priddle chaired the National Energy Board from 1986 to 1997, and was Assistant Deputy Minister of Petroleum at Energy, Mines and Resources (now NRCan) from 1974 to 1985. Under his direction, the Panel was mandated to conduct public hearings throughout B.C. communities (including First Nations communities) to solicit the views of residents on issues surrounding offshore oil and gas development. On 30 July 2003, two additional Panel members were appointed: Don Scott, a chartered accountant and former mayor of Prince Rupert; and Dr. Diana Valiela, an environmental and natural resources lawyer.

The PRP held public meetings between 5 April 2004 and 18 May 2004 in Masset and Queen Charlotte City on the Queen Charlotte Islands; Prince Rupert, Lax Kw'alaams, Kitimat and Kitkatla on the North Coast; Bella Coola on the Central Coast; Port Hardy, Alert Bay and Victoria on Vancouver Island; and Vancouver on the Lower Mainland. Stakeholders presented submissions in both oral and written formats. After the meetings were completed, written records of each session were made publicly available on the Panel's Web site<sup>(5)</sup> and the public was given until 6 August 2004 to comment on submissions.

The PRP's report was released on 19 November 2004. The Panel found that the public was intensely divided on whether or not to lift the moratorium. Overall, of those that participated in the public hearing process, 75% wanted the moratorium to be maintained and 23% wanted it to be lifted.

There was a general agreement amongst the participants that there were large and important gaps in the biophysical baseline data and the environmental and socio-economic impact information for the Queen Charlotte region, but there was disagreement as to how these gaps should be addressed. Those in favour of maintaining the moratorium felt it was unsafe to lift the ban until those gaps have been filled, while those in favour of

lifting the moratorium felt those gaps could be filled only if the ban was lifted. Similarly, ecosystem protection was a widely held concern, but there were disagreements about the best way to achieve this – whether by keeping the moratorium, or lifting it and implementing a regulatory regime. The extent and nature of socio-economic impacts was also an area of contention, though almost all of the participants wanted to ensure that First Nations interests and concerns were adequately addressed.

The Panel noted that the availability and interpretation of data were a large source of disagreement among participants. The Panel also observed that there had been little dialogue among stakeholders, and believed that facilitating discussions, along with gathering additional information, would help build a consensus.

In light of the wide range of opinions expressed, the Panel listed four options that the government can consider: 1) keep the moratorium; 2) keep the moratorium or defer the decision while undertaking a suite of activities, and subsequently review it either at a predetermined time or at an indefinite future time; 3) lift the moratorium and undertake a suite of activities prior to accepting any oil and gas activity applications; and 4) lift the moratorium and allow applications for exploration. The Panel noted that it would probably be necessary to maintain the moratorium if the government desired the active participation of important groups, particularly the First Nations people.

### **B. Scientific Review Panel**

On 30 July 2003, the Minister of Natural Resources announced the creation of the Scientific Review Panel, to be established and conducted by the Royal Society of Canada. The Panel was chaired by Dr. Jeremy Hall, of Memorial University of Newfoundland. Other members were: Dr. Richard Addison, Salt Spring Island, British Columbia; Dr. John Dower, University of Victoria, British Columbia; and Dr. Ian Jordaán, Memorial University of Newfoundland.

The science review was the first step to be completed, with the Panel submitting its report to the Minister on 16 February 2004.<sup>(6)</sup> The report identified 17 gaps in science that it recommended filling before development of the resources is allowed to take place. The Panel concluded that as long as “an adequate regulatory regime is put in place, there are no science gaps that need to be filled before lifting the moratoria on oil and gas development.” Though the Panel did not explicitly recommend that development be allowed immediately, it recognized that lifting the

moratoria would facilitate filling in the science gaps it had identified through shared-cost partnerships with the industry sector. As long as the moratoria are in place, private industry is unlikely to participate in the research needed to fill the gaps. It is also important to note, however, that the “adequate regulatory regime” mentioned by the Panel is not yet in place.

### C. First Nations Engagement Process

On 16 February 2004, Cheryl Brooks, a consultant and professor at Royal Roads University in Victoria, British Columbia, was appointed by the Minister of Natural Resources Canada as the facilitator of the third phase of the federal review, the First Nations Engagement Process. This process was designed to provide First Nations people with an additional opportunity to voice issues of particular or unique concern to First Nations communities. Chiefs and councils from about 40 communities throughout the region were consulted during the engagement process, which ended on 3 September 2004.

The report on the First Nations Engagement Process was released on 19 November 2004. The First Nations people who participated in the process objected to lifting the moratorium because their livelihood, culture and survival are intimately connected to the ocean. Some felt that the scientific evidence that had been presented was inadequate and did not allow them to make an informed decision, while others felt the evidence was sufficient, but that the potential economic benefits of offshore exploration and development did not offset the associated risks. Issues of ownership and jurisdiction were also of concern, and the First Nations people were of the opinion that no further exploitation of resources should occur in their traditional territories until treaty settlements had been made. Some people indicated a willingness to work with the government to arrive at some sort of consensus; but before they would be willing to consider lifting the moratorium, the First Nations people need to receive absolute assurance from both the federal and provincial governments that their rights, title and interests will be protected, and that they will be full partners in decision-making and in the management and utilization of the resources in their territories.

### D. Next Steps and Timeline

If all goes as planned, it is possible that a decision regarding the federal moratorium could be made late in 2004. Once a decision has been made, the federal government would enter into negotiations with British

Columbia regarding jurisdictional issues and the fiscal and regulatory regime that would govern exploration and development. These negotiations would be similar to those that preceded offshore oil and gas development off Canada’s East Coast (the Atlantic Accords).<sup>(7)</sup>

The time required for negotiating such an important arrangement, however, along with the need to resolve First Nations’ claims in the area, make it virtually impossible for the B.C. government to achieve its goal of seismic exploration by March 2005. In addition, recent changes to regulations under the *Canadian Environmental Assessment Act* have made it mandatory to complete an assessment of all proposed exploration activities before they can proceed. It seems unlikely, therefore, that any exploration and/or development will take place in the near future, even if the federal moratorium is lifted by the end of 2004.

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- (1) *British Columbia Offshore Hydrocarbon Development: Report of the Scientific Review Panel*, January 2002, p. 51; available at: <http://www.offshoreoilandgas.gov.bc.ca/reports/scientific-review-panel/>.
  - (2) Further information is available at: <http://offshoreoilandgas.gov.bc.ca/>.
  - (3) Judith Lavoie, “B.C. Oil and Gas Team Sets 2005 as Time for Offshore Seismic Testing,” *Times Colonist* [Victoria], 13 June 2003.
  - (4) Natural Resources Canada, News Release, “Review Process To Examine Issues Around B.C. Offshore Development,” 28 March 2003, [http://nrcan.gc.ca/media/newsreleases/2003/200320\\_e.htm](http://nrcan.gc.ca/media/newsreleases/2003/200320_e.htm).
  - (5) <http://www.moratoriumpublicreview.ca>.
  - (6) *Report of the Expert Panel on Science Issues Related to Oil and Gas Activities, Offshore British Columbia*, February 2004, available at: [http://www.rsc.ca/BC\\_offshore/fullreportEN.pdf](http://www.rsc.ca/BC_offshore/fullreportEN.pdf).
  - (7) For a brief description of the Accords and links to related legislation, see: [http://www.dal.ca/~poliwww/Atlantic\\_Accords.htm](http://www.dal.ca/~poliwww/Atlantic_Accords.htm).