

December 22, 2016

Expert Panel
Review of Environmental Assessment Processes
c/o Environmental Assessment Review Secretariat
Canadian Environmental Assessment Agency

Dear Madam Chair and Panel Members:

RE: Major changes needed to Environmental Assessments (EA) to protect environments under threat from industrial development such as proposed anchorages off Gabriola Island BC.

-Written Submission of Gabriolans Against Freighter Anchorages (GAFA)

There is among many BC citizens a loss of confidence in the ability of the federal ministries to protect the marine environment from harm and/or destruction. Legislation that was introduced in 2012 by the Harper government further weakened the environmental protection criteria. What is needed are changes to the legislation governing how Environmental Assessments are triggered, and further, how they are carried out and administered. There is an opportunity today to right some wrongs and to bring about real change for the betterment of the environment.

The concerns about the protection of marine environments are shared by Gabriolans Against Freighter Anchorages (GAFA). GAFA is a grassroots organization of residents and business owners dedicated to the preservation of the marine environment of the Islands Trust Area and particularly the coastal waters and marine ecosystems of Gabriola Island. The reasons why GAFA was formed are explained in the brief background that follows:

A group of shipping interests, made up of Port Metro Vancouver (PMV), the Nanaimo Port Authority and BC Chamber of Shipping, and lead by Pacific Pilotage Authority (PPA), is proposing that the Federal Minister of Transport designate five anchorages for cape-size (300+ metres) vessels along the entire northeast shoreline of Gabriola Island. The purpose of these anchorages is to provide “overflow parking” for Port Metro Vancouver. The proposal was advanced during the regime of the previous Conservative Government without consultation with the public or First Nations. The fact that this proposal has not been halted due to environmental concerns highlights the inability of the current assessment processes to protect sensitive environmental areas from industrial development. Because of this fractured assessment system that appears to favour industry over environment there has been no adequate scientific study including site-specific fish surveys and no baseline data from which to measure negative impacts on an important variety of marine mammals and fish species including British Columbia’s iconic Orcas, humpback whales, sea lions, chinook salmon, herring, and rock cod. While the larger species often grab public attention, the forage fish such as herring, needlefish (Pacific Sand lance), Surf Smelt and others also inhabit the marine ecosystem off Gabriola. They are the

foundation species that the larger species need for their very survival. The forage fish importance in the food web cannot be understated and their habitat must be protected.

The recommendations for changes to the EA are described in the following sections. The particular case of the Gabriola anchorages proposal is used as an example to illustrate our arguments.

1. Institute a Sustainability model

The present narrow scope of the federal EA is concerned only with avoiding, or minimizing where possible, any negative environmental impacts of a single site project. For example, the focus of the Gabriola anchorages Environmental Overview Assessment (EOA) appeared to be on first diminishing the importance of the identified harm to fish and fish habitat, and then secondly on generating hypothetical ‘mitigation’ measures designed to give the impression that if acted upon, they would ‘reduce’ the negative impacts within the footprint of the project. All the so-called results in the Executive Summary of the EOA were based on conjecture and not on science. The opinions were not subjected to any critical analysis by an independent assessment. Instead, the findings in the EOA were based on fact by assertion. In addition, there was no option for peer review of the findings.

A new Sustainability model EA would expand the concept of assessment to include regional and strategic as well as project levels. This will ensure a greater level of planning to include management of resources, and public and stakeholder input. It will establish a legal framework that will enhance the mechanism for triggering an environmental assessment. An expanded staff component would ensure that all the stages of assessment including monitoring would be effective.

The new sustainability model would require a project to define how it would improve the sustainability of an area, rather than how it would minimize the damage to an area. In a revitalized model there would be a ‘no’ option to any proposed project. Moving away from the present proponent-led model of self-assessing how much damage an individual project may do to a forward thinking model of regional, strategic sustainability would improve the level of public trust in the EA process.

2. Reinstate the classes of EAs removed in CEAA 2012 to include Screenings and comprehensive studies.

Critical changes to CEAA in 2012 dramatically changed the criteria for any EA review. Since that time, many projects are no longer required to complete an EA and those few that do are subject to very narrow, site-specific criteria. This was indeed the case for the Gabriola anchorages proposal. It is unacceptable that the anchorages proposal, with a footprint of almost 1000 hectares, would fail to trigger a review. If the intertidal and shore marine environments are included in the impact study the ‘footprint’ is much larger.

Had assessment regulations included screenings and comprehensive studies when the Gabriola anchorages were first proposed, we have no doubt that an EA would have been triggered. The Gabriola Anchorage proposal would have been subjected to greater scrutiny; serious independent scientific evaluation, including a baseline study, and therefore as an end result would have achieved greater environmental protection.

3. Institute Independent assessments

In the proposal for the Gabriola Anchorages, the proponent was permitted under the existing provisions to set the limitations of the “assessment”, hire the contractor, define the scope of assessment and (unrealistically) restrict the assessment of harm to the anchorage footprint. There was no opportunity for public input, and as the draft Environmental Overview Assessment (EOA) revealed, the resulting so-called assessment was little more than a desk-top review of literature, some of it almost 30 years old. One of the references listed was “Encyclopedia Britannica”, which might be seen as a reflection of the ‘depth’ of the “science” in the assessment. There was no actual scientific research of the project area other than one day in December when an ROV completed approximately 6 short transects. This amounted to limited information on less than 1/1000th of the anchorage site.

As noted earlier in spite of the size of the proposed anchorage footprint and the project that would include 5 cape-sized vessels anchoring in a piece of coastline, an EA was not triggered under the current CEAA 2012 regulations. This afforded the proponents and the contractors writing the review the ‘flexibility’ to cherry-pick CEAA points to give the impression of compliance with the CEAA without actually making any meaningful attempts to address the obvious environmental risk factors raised by their superficial review.

The result of this CEAA 2012 process is that there is no legal obligation on the contractor to abide by any guidelines. It therefore becomes easier to dismiss or undervalue the acknowledged and serious adverse environmental effects of the anchorage project as “Not significant” in order to satisfy the wishes of their employers, the proponents. In the Gabriola EOA, serious environmental impacts and fish and fish habitat harm were identified and then essentially dismissed in the following ways. Common catch phrases appeared regularly in the document

- *“low likelihood of occurrence....”*,
- *“localized”*
- *“short term”*
- *“temporary”*
- *“not’ significant”*
- *“partially reversible”*
- *“these residual effects would be significant, they are deemed unlikely to occur”*

These ‘opinions’ and ‘assertions’ are not based on any scientific knowledge of the area. Instead the report uses them to create unrealistic expectations of minimal impact that the anchorages would have on this pristine coastline. There is an absence of independent peer review or critical review of the overall EOA by one of the federal agencies not involved with the proposal.

The resulting absence of rigorous scientific study and environmental assessment amounts to a lost opportunity to protect this key area of the Georgia Strait.

The new CEAA model should move away from the proponent-led assessment model and institute an independent EA that would hire highly qualified scientists to carry out rigorous assessments. The cost for the independent assessments would fall to the proponents.

The new assessment process would include independent assessments at several levels: regional, strategic and local. It would address not only environmental but also economic and social and cultural impacts.

4. Scientists with expertise become prime decision makers, removing the politics from the decision-making.

Under the present s.67 of the CEAA 2012 federal agencies are permitted to undertake industrial operations with no meaningful assessment and no meaningful monitoring requirements. The present EA model allows proponents to list mitigation efforts for which they have no legal obligation to undertake. There are no negative consequences for the proponents should they disregard the mitigations that allowed a proposal to proceed.

The burden of the negative consequences of a project such as the anchorages off Gabriola—environmental, economic, and social—fall not only on the small community of Gabriola itself but also on the larger marine ecosystem that this coastline serves: Killer Whales, humpback, sea lions, salmon, forage fish, eagles, endangered Marbled Murrelets and others.

At present, politicians have the power to override all scientific knowledge, regional negative impacts, and local negative environmental and economic and social impacts for the perceived ‘greater good’ with no obligation to defend their decision. In the example of the Gabriola anchorages proposal, there have been several independent scientists, specialists in their field, and others who have reviewed the Gabriola Anchorages EOA and who have called into question the results of the ‘science’ rationale in the Gabriola EOA. The independent scientists pointed out that no baseline survey has been completed, and no actual scientific research done in the proposed area. There is no way that the proponents can actually do any meaningful follow-up monitoring or mitigation without this baseline knowledge.

The new model of assessment would see a team of expert independent scientists within the Federal framework that would ensure fair, open scientific rationale for any proposed project that would have possible negative impacts on the environment, local economy, or community now or in the future. A project could not move forward without a rigorous environmental assessment first. If the project environmental assessment identified significant harm to fish or fish habitat for example, the independent assessment team

would have the legislative power to reject the proposal. Cabinet could not override the decision.

5. Public participation at all stages of the EA.

The present assessment process is not supportive of open and transparent public participation. For instance, the proposal for the Gabriola anchorages was discussed among the proponents as far back as 2011 but only came to the attention of the public through a mention in the local newspaper in 2015. By then the proponents, when approached by concerned citizens, left the impression that many of the 'decisions' had been made. The current weak environmental laws allowed for this to happen without consultation with the local community most affected by this project. First Nations in the area were not consulted.

Interested parties should be notified of a project and would have the opportunity to have input at the initial stages, during and after the completion of the assessment process.

In a new process: There would be an opportunity to discuss the process and the results of assessments: Initiate a process whereby communities and interested parties can have an opportunity to ask questions and to hear justifications. These must be given in a timely manner. At present, the responses received to letters to various federal ministers are frequently simply a form letter, lacking in answers to the specific questions asked. This needs to change. Expert scientists and others are asking legitimate questions regarding this anchorage proposal and the answers are not forthcoming.

This area of Gabriola is under the protection of the Islands Trust, whose mandate is to preserve and protect. Under a new process there would be a more recognition of this Islands Trust governance and a more meaningful opportunity for Islands Trust Council to participate in this process.

There will be strong public support for such a model. With this new process, greater participation in the Gabriola Anchorages EA would be possible from independent scientists, ENGOs, as well as others who have publicly expressed their support for requesting that the federal government halt this anchorage proposal. Our Federal Member of Parliament, our provincial MLA, The Islands Trust Council, the Regional District of Nanaimo, The Gabriola Chamber of Commerce, The Gabriola Arts Council, a group of independent scientists, and more than 5,000 residents of Gabriola Island, Vancouver Island, Metro-Vancouver and other parts of British Columbia and Canada have all expressed serious concern about the lack of consultation, lack of study, the risk of serious harm to the local and regional economy associated with these proposals, and the significant potential for adverse environmental effects to occur.

6. Consideration of best alternatives should include all alternative options or scenarios on a broader regional basis as assessed by an independent process.

Again using the Gabriola anchorages as an example of a failed process under the current assessment process, the proponents were in charge of assessing ‘alternatives’ and the only ‘alternatives’ they chose to consider appears to be looking at ‘other anchorage sites’. On deeper examination into the current Port of Vancouver (PoV) management, it was apparent to the opponents of the proposal that the ‘problem’ is not simply a lack of anchorages: the problem includes the chain of supply: how the goods arrive in Vancouver, and how the ships are managed arriving and leaving port. There is currently a worldwide over-supply of ships. The result of this occurrence is that there are ships at anchor in the current PoV anchorage sites and those of the Gulf Islands that are not waiting to pick up or drop off cargo. Instead, they have nowhere to go and simply “parking”. Another question concerning anchorages as justifiable alternatives is whether the proposed anchorages off Gabriola are even actually safe anchor sites for super tankers. Answers to these questions go unanswered from Ministry of Transport. To return a level of confidence to concerned citizens, the federal EAs need to be under independent oversight. Again, the proponents cannot be the lone arbiters of what constitutes an ‘alternative’. With this new protocol, the Gabriola Anchorage proposal would have an independent agency examining the inner workings of the PoV, PoN and its partners so that there would be some assurance that the environment will have priority over industrial development and profit. We recognize that there must be a place for transport of goods through Canada’s ports, including PoV. However, the balance between environmental protection and industrial development must be based on sound results from independent scientific investigation.

In summary, the present system of environmental assessment fails completely to effectively safeguard our marine environment from unrestricted industrial development. To be effective there must be an integrated package of reforms.

Presentations to this review panel by WCEL and BC Nature also provide compelling suggestions for how best to move forward, and this submission has benefited from the recommendations in those reports. Robust legislation based on the changes recommended in this submission and in the others, would do much to protect fragile ecosystems such as the Gabriola offshore.

The Federal Government believes that a new “Oceans Protection Plan” will create the capacity to respond effectively to an environmentally catastrophic spill. We are skeptical about this claim, but will assess the details of the Plan as they are revealed. A coordinated plan to protect the coastal and marine ecosystems is desperately needed especially for the south coast and Salish Sea.

It is our position that the best hope for true “Ocean Protection” is in legislation that would strengthen the federal EAs so that any projects with identified environmental risks are required to adhere to serious mitigation measures that are legally binding and studiously monitored for compliance by independent scientists, and that projects with unacceptably high environmental risks are rejected.