CASE STUDY BACKGROUNDER

The *Irving Whale* case and Gulf Environmental Governance

- From 1970-96 the *Irving Whale* posed significant threat to health of south-central GSL
- Appears like a 'time before present', but the IW case captures the Gulf in transition
- How was the wreck apprehended and dealt with in environmental terms?
- The transition: from open ocean regime to sectoralized environmental governance

Perhaps it is not surprising that the Irving business empire, which bestrides Maritime Canada, was central to one of the most serious pollution threats in the history of the Gulf of St. Lawrence. Nor should it be surprising that the Government of Canada struggled politically for more than a quarter century with the aftermath of that incident. The Irving zaibatsu is a formidable adversary and the Gulf of St. Lawrence is a challenging site for state activity. In addition, the shape of Gulf governance evolved markedly in the quarter century which spans this case. The result makes the *Irving Whale* affair a fascinating window into the formative phase of Gulf environmental politics.

When the fuel barge *Irving Whale* sank on 7 September 1970, Canadian territorial waters extended just 12 nautical miles offshore, well short of the wreck site. In addition, environmental institutions were in flux. Environment Canada was only a few months old. An amalgam of units from the former departments of Fisheries and Forests, and Energy, Mines and Resources, it was still in the very early stages of consolidation. A separate department of Fisheries and Oceans did not appear until the end of that decade. Not until 1974 did Ottawa announce its first environmental assessment process for screening projects in federal jurisdiction. The more senior Department of Transport enjoyed a stronger operational and legal position by virtue of the *Canada Shipping Act*. While Transport Canada was not generally regarded as an environmental champion, the statutes and regulations under which it operated could be adapted in this direction.

In July 1996, the Government of Canada took the decision to raise the barge in order to prevent the release of its Bunker 'C' oil cargo into Gulf waters. By this time the environmental legal regime had changed dramatically. An international oil pollution shipping convention was in place. Canadian jurisdiction had been extended to the 200-nautical mile limit. The federal environmental assessment regime had been formalized under 1984 cabinet guidelines and the permitting system now called for both technical studies and public consultation for the impacts of any federal-sponsored or supported projects. Additional statutes covered the permitting of marine dumping and marine toxic substances.

In this paper we trace the decision-process that led to the 'lift' decision, as a pivotal event in Gulf of St. Lawrence environmental governance. Particular attention is given to the roles of technical input and public input as well as the shaping of a particular policy community. The public meetings and court actions provided nodes where separate local groups could connect and coordinate.

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Reflections

The *Irving Whale* case offers a telling perspective on two moments of marine environmental politics and the shifting politics that attend them. Over the course of a generation, a new regime is fashioned to respond to oil pollution. This is accompanied by a significant expansion of science activity and the codification of a new, compound, regulatory framework.

Even so, the 1990s reveal a federal state straining to expand its capacities to deal with marine environmental issues. Adhesion to new international ship-source pollution conventions forced a radical revision to federal crown policies. On another front the EARPGO era revealed significant shortcomings of design and result. Both initiatives would soon face a new regulatory regime that was anchored in the *CEAA* and the *Oceans Act*. Also complicating the marine oil framework was the expansion in civil society actors and the proliferation of political venues including courts and advocacy channels.

Once achieved, the *Irving Whale* recovery closed the book on a longstanding issue. Here the timing was important. Federal environmental impact and conservation thinking was in flux, with new statutes for impact assessment, species at risk and ocean management all in play between 1995 and 2000. The *Whale* recovery operation was undertaken under the 'old' rules and regulations, enabling federal agencies levels of operational flexibility and public accountability that would probably not be possible today.

Many aspects of the *Irving Whale* story speak to Gulf of St. Lawrence environmental governance. It captures the transition from virtual laissez-faire to formalized state regulation on ship-source oil pollution, over a period of three decades. It also illustrates the manner in which an epistemic community coalesces around oil pollution prevention and containment. The fragmented distribution of program responsibilities among multiple agencies, itself a product of incremental legislative action, is a further characteristic of note. All of these features underline the necessity of adopting a multi-sectoral approach in exploring environmental governance in the Gulf. Further case studies can shed valuable light on adjacent policy sectors.

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