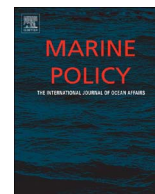




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Stronger together: Strategies to protect local sovereignty, ecosystems, and place-based communities from the global fossil fuel trade

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ABSTRACT

In the Pacific Northwest, residents are mobilizing to prevent the coastal export of fossil fuels and protect unique ecosystems and place-based communities. This paper examines the diverse groups, largely from the Bellingham area, and how they succeeded in blocking construction of what was to be the largest coal-shipping port in North America, the Gateway Pacific Terminal (GPT). Tribes, environmental organizations, faith-based groups, and other citizen groups used a multitude of approaches to prevent development, both independently and in concert. This paper reviews the various ways in which the groups collaborated and supported one another to resist the neoliberalization of the coast and support local sovereignty, unique ecosystems, and place-based communities. Groups like Power Past Coal, Protect Whatcom, and Coal-Free Bellingham fought for important and protective changes and evidenced communitywide political support, but the sovereign rights of the Lummi Nation were the legal bar to constructing the coal terminal.

1. Introduction: the expansion of fossil fuel exports in the Pacific Northwest

During the past four years, the Pacific Northwest (British Columbia, Canada, and Washington and Oregon, USA) faced 28 proposals that would support the export of fossil fuels to Asia [1]. However, the regulatory agencies with authority to permit construction of these terminals have denied all but three of the proposed projects: an oil port, Tesoro Savage Vancouver Energy Distribution Terminal in Vancouver, Washington, a coal port, Millennium Bulk Terminal, in Longview, Washington, and a liquefied natural gas (LNG) terminal on Lelu Island near Prince Rupert, British Columbia. This article examines approaches used by Washington coastal communities to successfully challenge what would have been the largest coal terminal in North America, the Gateway Pacific Terminal (GPT) in Bellingham, Washington [2].

For years, Washington residents have worried about the safety, health, and environmental problems that accompany fossil fuel terminals and refineries. The most recent accident was the June 3, 2016 derailment of a train carrying Bakken crude across Oregon to the port of Tacoma, WA. Sixteen cars derailed, four of which exploded and burned for a day before firefighters were allowed to approach. Communities were evacuated, and oil appeared in the Columbia

River the next day [3]. Tribes and environmental organizations believe that such export activities and facilities pose a risk to public and environmental health [4].

This paper examines the policy and legal actions of 12 diverse community groups to halt the construction of the GPT in Bellingham, Washington. It begins with background on the GPT project and an overview of the policy and legal processes required for permitting or denying a fossil fuel project in the United States. The paper then introduces the main participants involved in opposing the GPT, namely the Lummi Nation, which successfully cited treaty-fishing rights to block the project. It explains how these various groups worked together or independently, drawing upon diverse sets of beliefs and skills, in their attempts to stop the fossil fuel export project. Last, this paper discusses benefits and challenges of this movement that may inform similar social movements. It highlights the importance of tribal and non-tribal alliances and grassroots efforts to affect the policy and legal process.

2. The Gateway Pacific Terminal

In 1992, Pacific International Terminals (PIT), a venture/partnership between SSA Marine and Westshore Terminals, asked the Army Corps of Engineers for permission to build a pier that would ship bulk

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goods out of Cherry Point. Although the Whatcom County Council allowed for a shoreline and a development permit in 1997, the Washington Department of Ecology, Washington Fish and Wildlife, and a variety of citizen groups appealed the County's decision to Washington's Shoreline Hearings Board. In 1999, the parties reached a settlement, resulting in the halting of port development [5].

In 2010, SSA Marine, one of the largest marine operators in the world, once again announced plans to build the GPT at Cherry Point, this time with a much larger facility that would include the export of coal [6]. Although the 1855 Treaty of Point Elliot preserved the Lummi's ability to access their traditional fishing grounds at Cherry Point, they ostensibly lost formal ownership of the land at Cherry Point in 1872, when a Presidential Executive Order allowed the Bureau of Indian Affairs to illegally sell the property to non-indigenous squatters [7]. Now it is an industrial landscape, hosting two oil refineries and an aluminum smelter [8]. If completed, the GPT would have been the largest coal-export terminal in North America, shipping 54 million metric tons of commodities per year, including coal, on 487 vessels [9]. Coal producer Cloud Peak Energy had purchased a 49% stake in the GPT and planned to ship 17.6 million tons of coal, transported by rail from the Powder River Basin 1300 miles away [10].

The U.S. Army Corps of Engineers was the main regulatory agency responsible for the federal environmental review under the National Environmental Policy Act (NEPA). Whatcom County and Washington Department of Ecology led the state's environmental review under the State Environmental Policy Act (SEPA) [2]. The Army Corps' task was to make sure the project was following federal laws, commitments, mitigation measures, and permit decisions. This included assuring that the project adhered to tribal trust responsibilities, which included consulting tribes over issues such as fishing rights, fisheries habitat, and cultural resources [11].

2.1. Contested economic benefits

An economic analyst hired by GPT claimed that the GPT would introduce 863 total jobs to the Whatcom County economy during the first phase of the terminal's development and 1229 direct jobs once the GPT was completed. The terminal was also projected to contribute \$8.1 million in state and local tax revenue annually and \$126.3 million to annual personal wages in Whatcom County [12]. In general, proponents of the GPT believed that this project would help keep youth in the county instead of going elsewhere to look for jobs [13]. The indigenous Crow Nation in Montana also supported the GPT because 9 million tons of coal lies beneath their land and its extraction for export would aid their local economy [4]. They owned part of the GPT project, with the potential of earning \$10 million over the first five years of the project [13].

CommunityWise Bellingham, a group organized to evaluate the GPT project, contested these claims. Their analysis – described below – concluded that disruptions from the project could negatively affect employment and economic growth in ways that outweigh the claimed benefits [14].

2.2. Expected environmental and social impacts

In addition, various local groups claimed the project would impact Cherry Point's habitats for birds, marine invertebrates, marine mammals, and many species of fish, including a genetically distinct species of herring. To protect these and other species in the local ecosystem, Cherry Point was declared an aquatic reserve under the Washington State Department of Natural Resources [8]. Although this designation does not affect private land ownership, opponents to the GPT often cite herring and other ecosystem components in the environmental assessments [15,16]. During the environmental review and the Army Corp's decision-making process, the Lummi Nation and local environmental groups stated their concerns that the GPT would increase underwater

vessel noise, shipping accidents, oil spills, and threats to wildlife. They also believed the GPT would block access to fishing and harvest of wildlife. For example, the Lummi Nation claimed the GPT would impact their ability to access their treaty-protected tribal fishing grounds [17]. A Vessel Traffic and Risk Assessment Study, required as part of the commencement permit process for the GPT, estimated “that GPT would increase the Lummi fishing disruption” by 15 crab pots per Lummi fisherman per year [18].

2.3. The policy, legal and economic context

Under U.S. federal and state environmental laws, a major coastal infrastructure project such as the GPT requires formal review of its potential environmental impacts, with opportunities for public review and comment. In a democratic process such as this, policy changes are ideally approved if they foster public interest. However, even in the most ideal case, most policies have winners, who stand to benefit from a policy change, and losers, who stand to bear the costs of a policy enactment. Proponents of the fossil fuel terminals claimed that they would increase benefits to local communities because they would increase local employment [19]. On the other hand, a large cross-section of local communities argued it would threaten treaty rights, unique ecosystems, and place-based values [9].

To balance the impact of a policy on winners and losers, cost-benefit analyses, the cornerstone of policy-decision making in the U.S.A., employ Kaldor-Hicks compensation criterion. This criterion recommends that if policy winners gain sufficiently to theoretically compensate losers, the policy should be adopted. However, adoption of this criterion in public policy has two important challenges. First, opponents of the policy may disagree with the values and analytical assumptions underpinning cost-benefit analyses. For example, CommunityWise Bellingham opposed expansion of the GPT by challenging the analytical assumptions of its proponents [20]. Second, policy losers may worry that a policy change will cause irreversible damages to the ecosystems and/or that they will not actually be compensated for decline in their wellbeing (whether social, economic, or cultural). These concerns motivate policy losers to mobilize and engage in the policy process.

When organizations and individuals become mobilized over an issue, they can pursue multiple avenues to affect the policy decision. Due to built-in divisions of power, the U.S. policy process enables advocates to influence policy through the legislative, executive, and judicial branches of federal, state and local governments [21]. Historically, Washington State has been among the greenest states in the USA, making the state regulatory and executive agencies more likely to consider environmental concerns in their economic and social development decisions [22]. Further, Washington has carbon dioxide emission targets, making its state agencies potentially more concerned about fossil fuel development [23]. Recently global climate change advocates developed Initiative 732, utilizing the ballot measure process to press the Washington legislature to adopt a carbon dioxide tax [24]. In sum, the public, the executive branch, and the legislative branch in Washington State are among the most active people in environmental issues in the nation.

Policy actors will select from these multiple policy avenues depending on which route they believe will be the most effective [25]. They may not always agree on which is the best route. In the case of GPT, some believed the regulatory and permitting route was the appropriate pathway and used their resources to mobilize the public to engage in this process, including the Lummi Nation and their coalition as well as the Protect Whatcom group [26]. The Lummi Nation chose to influence the GPT permitting process by relying on their federal treaty rights and permitting process. They claimed that the Cherry Point GPT would violate the Treaty of Point Elliot of 1855 and the Boldt Decision of 1974, which re-asserted their right to fish in their usual and accustomed (U & A) fishing grounds around Cherry Point, Washington [27].

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