

Bill C-55

An Act to amend the Oceans Act and the Canada Petroleum Resources Act Standing Committee on Fisheries and Oceans

November 9, 2017 8:45 – 9:45

Rm 410, Wellington Building, 197 Sparks Street

Speaking Notes for Robert Lewis-Manning, President, Chamber of Shipping

Good morning Mr. Chair and members of the Committee. I am pleased to join you and to provide certain observations and recommendations on the provisions proposed in Bill C-55.

My comments are provided from the perspective of commercial marine transportation and trade more generally. This trade is both international and domestic in Canada.

The Chamber of Shipping represents the interests of ship owners, agents, and service providers responsible for over 60 per cent of Canadian international trade by ship. It also includes some coastal domestic trade. This includes everything from people in ferries and cruise ships, to bulk commodities such as grain that is exported to Asia. Our members' vessels can include the largest of vessels, but also smaller vessels such as tugs and barges,

Needless to say, marine transportation and its many spin-off benefits touch the lives of virtually every Canadian.

I have been involved with marine conservation initiatives on all three of Canada's coasts and the Great Lakes for many years, and I am currently a member of the National Species at Risk Advisory Committee advising the Government of Canada.

As one would assume, our sector is very involved and supportive of Canada's effort to protect our pristine coasts in a variety of ways, including through the *Oceans Act*, but also under legislation and programing coordinated by Transport Canada, Environment and Climate Change Canada and Parks Canada. The Oceans Protection Plan is a positive step in coordinating this effort amongst the three key federal departments and with external stakeholders.

We are pleased that Canada is on a progressive path to reaching the Aichi target of protecting 10 per cent of Canada's coastal and marine ecosystem by 2020. This is no small accomplishment and I applaud the efforts of the departmental teams at the Department of Fisheries, Oceans and the Coast Guard and Environment and Climate Change Canada.

In fact, it is clear to see how the intent of Bill C-55 will support achieving this target. Nonetheless, this proposed legislation must be considered in the context of coastal protection beyond the 2020 targets and how to best implement coastal protection and management. In doing so, some critical elements emerge.

When I last appeared before this committee in May, I highlighted a number of existing weaknesses in the process of establishing Marine Protected Areas. Unfortunately, some of these could actually be exacerbated by C-55 as it is currently written.

In this regard, I am going to address three aspects of the bill, namely: the proposed powers of the Minister; the definition of an ongoing activity; and the Proposed Offenses and Punishment Section.

Section 35.1(2) provides the Minister with the authority to establish an Interim Marine Protected Area (MPA) and then define the classes of activities permitted and prohibited in the Interim MPA.

Clearly, there is a need to accelerate the development of meaningful management plans that have a positive influence on the areas they are supposed to protect.

While establishing an Interim MPA might be viewed as a progressive approach to achieving this, we actually consider section 35.3(1) as the true achievement of transformative change, as it demands that the Minister make a recommendation for a regulation to designate a permanent marine protected area within five years of designating an Interim MPA.

The potential risk to the marine transportation sector is likely upfront in this process - in the initial establishment of an Interim MPA. Without the appropriate checks and balances, there is a real risk of the Minister making a less than informed decision about the activities that should or should not be included in the Interim MPA.

Ships, both large and smaller, operate in a diverse and frequently demanding environment. Their capacity to operate safely is influenced by a number of both external and onboard factors that include but are not limited to weather, hydrography, cargo loading, and human elements such as fatigue.

The spatial constraints or limitations that might arise from a legislative framework built around Bill C-55 could limit a vessel's ability to mitigate the impacts of these factors, and to therefore be able to transit safely. Certain flexibility must be built into the legislation and related regulations, that takes this need for nimbleness and practicality into account.

With respect to ongoing activities, the Bill proposes that the Minister will list the activities that are permissible in a specific Interim MPA and defines such activities as those that were lawfully conducted or authorized in the previous year.

This section, 35.1(1), continues to lack sufficient definition to provide a reasonable level of predictability for commercial marine transportation. This level of legislative vagueness leaves considerable latitude for the Minister to define ongoing activities.

Does this include consideration for Canada's commitment to the United Nations Convention on the Law of the Sea? Will classes of activities be applied with a broad brush or divided into further sub-categories that are applicable to the intent of an Interim MPA? How will this be managed when the impact could have binational implications? All of this remains exceedingly vague.

My last observation pertains to the proposed section 39.6, which pertains to Offences and Punishments. This aspect of the proposal is not associated only with the establishment of Interim MPAs but more broadly under the *Oceans Act*.

A robust monitoring and enforcement regime is certainly a key aspect of a strong legislative framework. Notwithstanding, the provisions in the proposed legislation are inconsistent with those found in the *Canada Shipping Act* and do not reflect a coherent, integrated approach between the relevant departments.

On the face of it, the scale of punishments appears extreme and in the case of small vessel operators, is clearly egregious and could result in undue harm to coastal businesses and the many communities they serve.

In an effort to improve upon the proposed legislation, we hope that you will consider the following recommendations:

1. Consider including a provision in the legislation that requires the Minister to publish his/her intent to establish an Interim MPA, in advance, within a reasonable period. By doing so, it would not only provide awareness and focus within federal and provincial governments, but would also provide visibility to external stakeholders and coastal communities most directly impacted by any new MPA.
2. Consider including a provision in the bill that requires the Minister consult with other key Ministers as well as relevant regulated industries prior to establishing an Interim MPA. In doing so, this would help avoid unintended consequences or incongruence between different pieces of legislation.
3. Reconsider the definition of an "ongoing activity." Restricting it to a lawful activity that occurred in the past year does not reflect the realities of commercial marine transportation and it places unnecessary constraints on initiatives that may be progressing more quickly than the five-year restriction found in section 35.3(1).

Just because an activity has not happened in a proposed area previously does not necessarily mean that the activity would be harmful to the area or inconsistent with the protection objectives or an Interim MPA.

4. Consider a formal association in the legislation with Transport Canada to implement a monitoring and enforcement regime. This could include additional harmonization in approach.

Overall, we are supportive of the intent of this legislation but caution that there is some significant change associated with it that demands both engagement and consultation with stakeholders and also engagement of other levels of government across the country.

MPAs need to deliver results driven by tangible benefit. While the proposed legislation may demand a schedule for completion, it does not replace the need for positive stakeholder dialogue and input.