Bill C-55
An Act to amend the Oceans Act and the Canada Petroleum Resources Act

Submission by the Chamber of Shipping

To the

Standing Senate Committee on Fisheries and Oceans

February 2019
INTRODUCTION

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. Marine transportation includes everything from people in ferries and cruise ships, to bulk commodities such as grain that is exported to Asia, to large container ships moving goods Canadian companies sell globally and manufactured goods that Canadians use in their day-to-day lives. Needless to say, marine transportation and its many spin-off benefits touch the lives of almost all Canadians.

The commercial marine 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 an additional positive initiative in coordinating this effort amongst the three key federal departments and with external stakeholders. We are currently developing the first Aquatic Species Conservation Agreement in Canada under the Species at Risk Act with both the Department of Fisheries, Oceans, and the Canadian Coast Guard and Transport Canada.

The Chamber of Shipping welcomes the opportunity to provide the Standing Senate Committee on Fisheries and Oceans our views on An Act to amend the Oceans Act and the Canada Petroleum Resources Act. The intent of the legislation, namely to accelerate the process of establishing Marine Protected Areas (MPAs), is supported and the recommended legislative amendments in this brief should avoid unintended negative consequences that could arise in the legislation’s current form.

BACKGROUND

On June 15, 2017, the Government of Canada introduced an Act to amend the Oceans Act and the Canada Petroleum Resources Act that seeks to dramatically transform the manner by which MPAs are established in Canada’s coastal waters.

The Chamber of Shipping was formally briefed by departmental officials on June 8. It was evident that officials from other departments were not extensively involved in the drafting of the legislation, which was concerning at the time considering the legislation’s association to commercial marine transportation and international trade more widely.

There is little doubt that the current process to establish MPAs is lengthy and that marine ecosystems could suffer further degradation during such a lengthy process. Notwithstanding, it is less apparent as to why the current process remains unnecessarily lengthy. It is possible that previous delays were a result of a poor allocation of resources and a lack of coordination between federal and provincial departments with affected stakeholders. This may have been amplified in certain situations by a lack of scientific evidence.
VESSEL OPERATIONS

The Canadian commercial marine sector has worked diligently in recent years to become more involved in all aspects of coastal protection, including involvement in MPA network planning, the development of National Marine Conservation Areas, and in the development of action plans to support the recovery of species at risk. Mitigating the impact of vessel operations on our coastal ecosystems is a top priority.

Ships, both large and small, 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 and efficiently. While many existing MPAs have typically been of low consequence to commercial marine shipping because they are located in coastal areas where vessels do not operate frequently, this is expected to change in the future as Canada moves further towards the Aichi target of protecting 10 per cent of Canada’s coastal and marine ecosystem by 2020. For example, DFO is intending to establish an MPA of 140,000 square kilometers west of Vancouver Island, which could affect commercial marine traffic destined for ports in Canada and the United States.

AREAS OF CONCERN

There are three aspects of the bill, which are cause for concern, namely: the proposed powers of the Minister; the definition of an ongoing activity; and the Proposed Offenses and Punishment Section.

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 tangible risk of the Minister making a less than informed decision about the activities that should or should not be included in the Interim MPA. The proposed legislation provides the Minister with the authority to establish an Interim MPA without any additional consultation, even with other Ministers, and then define the classes of activities permitted and prohibited in the Interim MPA.

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 level of legislative vagueness leaves considerable latitude for the Minister to define ongoing activities. 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 of an Interim MPA.
The proposed legislation also contains a framework for enforcement. 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 \textit{Canada Shipping Act} and do not reflect a coherent, integrated approach between the relevant departments. 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.

\textbf{RECOMMENDATIONS}

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. A reasonable period of notice 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 to consult with other key Ministers as well as relevant regulated industries prior to establishing an Interim MPA. In doing so, this would avoid unintended consequences or incongruence between different pieces of legislation. This does not need to be a lengthy process and should include a focus regarding activities that would be permitted in the Interim MPA.

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 other initiatives that may be progressing more quickly than the five-year restriction found in section 35.3(1).