September 13, 2018

Mr. Victor Senna  
Clerk  
Standing Senate Committee on Transport and Communications  
The Senate of Canada  
Ottawa, Ontario  
Canada, K1A 0A4

Re: Bill C-64, an Act Respecting Wrecks, Abandoned, Dilapidated or Hazardous Vessels Act.

As President of the Canadian Maritime Law Association I am writing to the Standing Senate Committee on Transport and Communications to express our organization’s concerns about Bill C-64, an Act Respecting Wrecks, Abandoned, Dilapidated or Hazardous Vessels Act which is to be considered by the Senate of Canada. There is a serious issue, detailed more below, which we must bring to the attention of your Committee and the Senate while it studies this proposed legislation.

About the CMLA

The Canadian Maritime Law Association (“CMLA”) is not-for-profit corporation consisting of practicing maritime lawyers and other organizations interested in the shipping and maritime industries. The CMLA was founded in 1951 and is Canada’s main organization for the study and the promotion of maritime law. One of the goals of the CMLA is to promote international uniformity and the reform of maritime law. The CMLA is Canada's representative to the Comite Maritime International (“CMI”), the international organization founded in 1897, which has been responsible for much of the world's international conventions dealing with maritime commerce
and law. **The mandate of the CMLA is to advance the development of effective, modern commercial maritime law within Canada** and the international shipping community. As such, one of its roles is to advance the development of both domestic and international laws with respect to removal of wrecks, salvage and problem vessels.

In addition to most of Canada’s practicing maritime lawyers and academics, our membership includes several industry organizations who are engaged in maritime commerce and are affected by Canadian Maritime Law, including: Association of Average Adjusters of the US and Canada; Canadian Bar Association; Canadian Board of Marine Underwriters; Canadian Fuels Association; Canadian International Freight Forwarders Association; Canadian Marine Pilots’ Association; Canadian Merchant Service Guild; Chamber of Marine Commerce; Chamber of Shipping of British Columbia; Company of Master Mariners of Canada; and Shipping Federation of Canada.

We appreciate the opportunity to provide comments on Bill C-64, *an Act Respecting Wrecks, Abandoned, Dilapidated or Hazardous Vessels Act*. **We strongly support** the implementation of the Nairobi Convention for the Removal of Wrecks by Canada along with **most of the measures to deal with vessels and wrecks of concern** set out in Part Two. **We do, however, have concerns about some provisions of Part Five that deal with the criminalization of non-owners.**

**Criminalization of Non-Owners**

Sections 30(3)(c), 36(c) and 37(3)(c) of Part Two, allow either the Minister of Transport or the Minister of Fisheries and Oceans (Coastguard) to give directives to non-owners of vessels to take corrective measures such as securing, repairing, dismantling, destroying and selling problem vessels. In addition, as an incentive to assist, s. 44 provides that, Her Majesty in Right of Canada will pay compensation to any person, including a non-owner, who takes corrective measures under these sections. Accordingly, this appears to be a useful provision allowing for the delegation of corrective measures to entities that are most interested in dealing with problem vessels such as harbour authorities, port authorities and municipalities.

Unfortunately, in addition to providing this incentive to those entities to take on corrective measures, Part Five of Bill C-64 also creates significant penalties to non-owners who refuse to follow a direction. Section 110(1) provides that every person who contravenes a list of enumerated provisions commits an offence. Sections 30(3)(c), 36(c) and 37(3)(c) described above are included in that list. For individuals, s. 110(4) provides for fines on summary conviction of not less than $5,000 and not more than $300,000. There is also possible imprisonment for a term of not more than six months. If the Crown chooses to proceed by way of indictment, the fines are not less than $15,000 and not more than $1,000,000 and possible imprisonment for a term of not more than three years. In the case of a failure to follow a direction related to a dilapidated vessel under s. 37(3)(c), the Crown is not able to proceed by way of indictment.
For persons other than individuals or vessels, the penalties are much higher. This would presumably include harbour authorities, port authorities, municipalities, and companies owning salvage type vessels. These fines range from a low of $100,000 to a high of $4,000,000. If an offence is committed or continued for more than one day, s. 112 provides that it constitutes a separate offence for each day. There are also provisions for director liability for acts of corporations if the directors authorize or acquiesce in the commission of an offence. Not all small business vessel owners or not for profit corporations such as devolved harbour operators can afford directors errors and omissions insurance. Such insurance, if available, typically contains exclusions for criminal and regulatory prosecutions or conditions whereby the insured director must repay legal defence expenses advanced by the insurer if the director is convicted.

There are also similar provisions for violations in the administrative monetary penalty section of the proposed legislation (s. 90), which triggers somewhat smaller penalties (see s. 90(4) & (5)). There is an immunity section (s. 128(1)), that is very convoluted but appears to be of some assistance. It appears to say that “[a] person, other than an owner . . . that is directed to take . . . measures under paragraph 30(3)(c), 36(c) or 37(3)(c) . . . or refraining from taking any measures, does not incur . . . (b) criminal liability, unless it is shown that the persons conduct was not reasonable in the circumstances.” While this provision appears comforting on its face, it is not really much different from a due diligence defence, which is already provided for at s. 119. It also does not apply to provide immunity from an administrative monetary penalty assessed under s. 90 for failing to comply with a directive.

If a port authority, harbour authority, municipality or owner of a salvage vessel is facing a large fine plus possible director liability for non-compliance with a direction, it is going to feel a great deal of pressure which may not be warranted under the circumstances. Since most port authorities have volunteer boards of directors, the possibility of director liability, could impede the ability of these harbour authorities to recruit and keep directors. It is counterproductive for regional economic development to discourage fisheries and marine commerce, particularly in coastal and inland areas of Canada without a diverse economic base, by imposing the risk of such penalties.

The CMLA believes it is not fair or reasonable to impose penal sanctions upon a person or an organization that is not a beneficial owner or an authorized representative of a vessel. Many such authorities may not have the finances available to advance the funds for the removal or mitigation of a wreck. It is not appropriate to force them to do such work under threat of penal sanctions.

The CMLA, in earlier submissions to the Government of Canada concerning Bill C-15 amending the Migratory Birds Protection Act, has warned that stringent regulatory penalties directed at persons not directly responsible for environmental hazards risk Charter challenges for restriction of available defences and disproportionality of penalties to the offence.

To the extent that the above described provisions create obligations against vessels, it should be noted that s. 131 of the Canada Shipping Act already imposes an obligation to assist upon the master of a ship in Canadian water who receives a signal that a vessel or person is in distress. It is the view of the CMLA, that it is not reasonable to extend that duty to eliminating the hazard,
including repairing, securing, moving or removing of the vessel in distress particularly to non-beneficial owners or others not associated with the vessel.

**Recommended Amendment**

The CMLA recommends amending both section 90 and section 110 to delete all references to subsections 30(3)(c), 36(c) and 37(3)(c).

There may have to be some other consequential amendments to delete references to these subsections as well. For example, see sections 89 (definitions) and 128 (immunity from criminal liability). However, with respect to s. 128, it is important to retain the provision that gives a non-owner following directions to take a measure under ss. 30(3)(c), 36(c) and 37(3)(c) immunity from civil liability.

**Appearance before the Senate Committee**

We would kindly request and welcome the opportunity to appear before the Senate Committee studying Bill C-64 to express our general support for the Bill and our concerns about the provisions described above.

Thank you for your attention to this matter. We look forward to hearing from you.

Respectfully yours,

**Marc D. Isaacs**

Marc D. Isaacs  
President, CMLA