

Tabled Document 371-4(3)

Sept 18/17

**Member's Statement 637 – 4 (3): Inuit Not Consulted on Proposed
Federal Government's Bill C-55**

Member's Statement 637 – 4(3): Inuit Not Consulted on Proposed Federal Government's Bill C-55

Hon. Johnny Mike (interpretation): Thank you, Mr. Speaker. I rise today to speak about the federal government's proposed Bill C-55, which will change the current legislation for marine management, as well as the Canadian petroleum industry practices. The Minister of Fisheries and Oceans is responsible for this mandate, and he is also the Minister responsible for the Canadian Coast Guard.

I harbour specific concerns on this bill that is currently proposed. The community of Pangnirtung has been involved in marine-related economies for many years, and what we can say as Inuit from Pangnirtung is that we became involved in the early 1800s when the whaling era first commenced in our area, including beluga, sealing, harp seals, and in this era we are harvesting the turbot or halibut fisheries.

Back in the 1960s when the sealskin prices remained fairly high, the Inuit of Pangnirtung sold over 16,000 sealskins in a period of one year. Last winter our community landed over 1 million lbs. of turbot that was then sold commercially. The bowhead whaling era also resulted in many harvests.

Further, the residents of Pangnirtung have been working with the federal government for over 40 years related to the Auyuittuq National Park.

As I stated earlier, the federal government is proposing a new bill which is very important to the livelihoods of the people I represent. My constituents are not informed about the possible impacts, including me. The purpose of this bill will be to protect marine protected areas. As I indicated, the people of Pangnirtung are deeply integrated with marine economic initiatives.

At this time I seek unanimous consent to conclude my statement.

Speaker (interpretation): Thank you. The Member for Pangnirtung is seeking unanimous consent to conclude his statement. Are there any nays? There are none. Mr. Mike, please proceed.

Hon. Johnny Mike (interpretation): Thank you, my colleagues, for allowing me to conclude my statement.

With respect to this proposed bill, they are seemingly fast-tracking this legislation. In light of the fact that the residents of Pangnirtung are heavily invested in the marine environment economic development projects, this proposed bill for marine management and petroleum industry sector management which is being developed seemingly turns its legislative back on the people of Pangnirtung.

I imagine this would apply to most Nunavummiut and perhaps all northerners that will be impacted but whom weren't consulted. The federal government never consulted any northerners

or my constituents on what concerns they may have about this proposed bill. This also applies to the deadening silence from our Inuit organizations, as there haven't been any consultations.

I wanted to speak to these concerns in this House, that bodies representing Inuit should be stating their positions. I would urge everyone to keep Pangnirtung in consideration, which is why I have spoken to this issue. It is quite obvious that not just our community of Pangnirtung will be impacted.

This is also in light of a specific provision, which is disconcerting to me as it applies to this bill, and that provision is 15.2.3 of the NLCA. It states that the Inuit do not have any right to own lands in any marine areas. It made me wonder if this provision was used as the reasoning for Inuit not being consulted for this bill. Is this bill being fast-tracked because of this provision's inclusion in our agreement? The way I see it is that this provision may be read to mean that Inuit won't be consulted or can voice concerns about the marine areas, at least in my perception.

This is becoming very concerning to the people of Pangnirtung due to the reasons I listed earlier. Will this bill protect the marine areas, will it stop all developments, or will it lead to more development? As Pangnirtung residents we are well aware of the potential in our offshore areas, which is used for economic opportunities today by interests from outside of Nunavut.

To provide an example, I would mention Newfoundland, Nova Scotia, Quebec, and BC in looking at outside interests. These jurisdictions have utilized the offshore benthic resources for many years while Pangnirtung is just starting to develop their fisheries. When such a bill is proposed that has potential impacts, especially in the protection of the offshore, this is absolutely a travesty to the people of Pangnirtung. This is the reason why I have risen in this House to speak to this issue.

The (interpretation ends) Liberal government (interpretation) has no considerations of the Inuit, and I would ask the federal government to withdraw any iconic memorabilia from Inuit, which seems to show that Inuit are part of Canada. Alternatively the legislation shows how inconsiderate they are of Inuit. It's not right. It's not right to the people of Nunavut, to me, and the people of Pangnirtung. They are just using Inuit as icons, which should not be the case.

This is a very important bill and I wanted to bring that up in the House, Mr. Speaker. It is of a major concern to me. Thank you, Mr. Speaker.



HOUSE OF COMMONS OF CANADA BILL C-55

An Act to amend the Oceans Act and the Canada Petroleum Resources Act

FIRST READING, JUNE 15, 2017

MINISTER OF FISHERIES, OCEANS AND THE CANADIAN COAST GUARD

BILL C-55

LEGISinfo

First Reading

PDF

First Session, Forty-second Parliament,
64-65-66 Elizabeth II, 2015-2016-2017

HOUSE OF COMMONS OF CANADA

BILL C-55

An Act to amend the Oceans Act and the Canada Petroleum Resources Act

FIRST READING, JUNE 15, 2017

MINISTER OF FISHERIES, OCEANS AND THE CANADIAN COAST GUARD

90848

RECOMMENDATION

His Excellency the Governor General recommends to the House of Commons the appropriation of public revenue under the circumstances, in the manner and for the purposes set out in a measure entitled "*An Act to amend the Oceans Act and the Canada Petroleum Resources Act*".

SUMMARY

This enactment amends the *Oceans Act* to, among other things,

- (a) clarify the responsibility of the Minister of Fisheries and Oceans to establish a national network of protected areas;
- (b) empower the Minister to designate marine protected areas by order and prohibit certain activities in those areas;
- (c) provide that, within five years after the day on which the order of the Minister designating a marine protected area comes into force, the Minister is to make a recommendation to the Governor in Council to make regulations to replace that order or is to repeal it;
- (d) provide that the Governor in Council and Minister cannot use the lack of scientific certainty regarding the risks posed by any activity as a reason to postpone or refrain from exercising their powers or performing their duties and functions under subsection 35(3) or 35.1(2);
- (e) update and strengthen the powers of enforcement officers;
- (f) update the Act's offence provisions, in particular to increase the amount of fines and to provide that ships may be subject to the offence provisions; and
- (g) create new offences for a person or ship that engages in prohibited activities within a marine protected area designated by an order or that contravenes certain orders.

This enactment also makes amendments to the *Canada Petroleum Resources Act* to, among other things,

- (a) expand the Governor in Council's authority to prohibit an interest owner from commencing or continuing a work or activity in a marine protected area that is designated under the *Oceans Act*;
- (b) empower the competent Minister under the *Canada Petroleum Resources Act* to cancel an interest that is located in a marine protected area that is designated under the *Oceans Act* or in an area of the sea that may be so designated; and
- (c) provide for compensation to the interest owner for the cancellation or surrender of such an interest.

Available on the Parliament of Canada Web Site at the following address:
<http://www.parl.gc.ca>

1st Session, 42nd Parliament,
64-65-66 Elizabeth II, 2015-2016-2017

HOUSE OF COMMONS OF CANADA

BILL C-55

An Act to amend the *Oceans Act* and the *Canada Petroleum Resources Act*

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

1996, c. 31

Oceans Act

Amendments to the Act

1 The *Oceans Act* is amended by adding the following before section 28:

Application

2 The Act is amended by adding the following before section 29:

National Strategy

3 The Act is amended by adding the following before section 35:

Designation of Marine Protected Areas

4 (1) The portion of subsection 35(1) of the Act before paragraph (a) is replaced by the following:

Marine protected areas

35 (1) A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section or section 35.1 for special protection for one or more of the following reasons:

(2) Subsection 35(2) of the Act is replaced by the following:

Network of protected areas

(2) For the purposes of integrated management plans referred to in sections 31 and 32, the Minister shall lead and coordinate the development and implementation of a national network of protected areas on behalf of the Government of Canada.

(3) Subsection 35(3) of the Act is amended by striking out "and" at the end of paragraph (a) and by replacing paragraph (b) with the following:

(b) delineating zones within marine protected areas;

(c) prohibiting classes of activities within marine protected areas; and

(d) respecting any other matter consistent with the purpose of the designation.

5 The Act is amended by adding the following after section 35:

Definitions

35.1 (1) The following definitions apply in this section.

foreign national has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act*. (*étranger*)

foreign ship means a ship that is a *foreign vessel*, as defined in section 2 of the *Canada Shipping Act, 2001*. (*navire étranger*)

ongoing means, with respect to an activity in the area of the sea that is designated by an order made under subsection (2) as a marine protected area, that the activity

(a) was lawfully carried out in the year immediately before the day on which the order comes into force and does not require an authorization, including a permit or licence, under any applicable federal laws or laws of a province;

(b) was lawfully carried out in the year immediately before the day on which the order comes into force and was authorized, including by a permit or licence, under any applicable federal laws or laws of a province; or

(c) was not carried out before the day on which the order comes into force, but was authorized and continues to be authorized, including by a permit or licence, under any applicable federal laws or laws of a province. (*en cours*)

Designation of marine protected area — Minister's order

(2) The Minister may, by order, designate a marine protected area in any area of the sea that is not designated as a marine protected area under paragraph 35(3)(a) and, in that order, the Minister

(a) shall list the classes of activities that are ongoing activities in the marine protected area;

(b) shall prohibit, in the marine protected area, any activity that is not part of a class of activities set out in paragraph (a) and that disturbs, damages, destroys or removes from that marine protected area any living marine organism or any part of its habitat or is likely to do so;

(c) may prohibit, in the marine protected area, any activity that is part of a class of activities set out in paragraph (a) and that is governed by an Act of Parliament under which the Minister is responsible for the management, conservation or protection of fisheries resources; and

(d) may exempt from the prohibition in paragraph (b) or (c), subject to any conditions that the Minister considers appropriate, any activity referred to in those paragraphs in the marine protected area by a foreign national, an entity incorporated or formed by or under the laws of a country other than Canada, a foreign ship or a foreign state.

Exceptions

(3) The prohibitions set out in an order made under subsection (2) do not apply to the following activities:

(a) activities that are carried out in response to an emergency situation or that are carried out by or on behalf of Her Majesty for the purpose of public safety, national defence, national security or law enforcement; and

(b) marine scientific research activities that are consistent with the purpose of the designation of the marine protected area and that are authorized under federal laws or laws of a province, if required to be so authorized.

Powers, duties and functions

35.2 The Governor in Council and the Minister shall not use lack of scientific certainty regarding the risks posed by any activity that may be carried out in certain areas of the sea

as a reason to postpone or refrain from exercising their powers or performing their duties and functions under subsection 35(3) or 35.1(2).

Recommendation of Minister

35.3 (1) The Minister shall, not later than the fifth anniversary of the day on which an order under subsection 35.1(2) comes into force,

(a) recommend to the Governor in Council that the Governor in Council make a regulation under subsection 35(3) to designate a marine protected area covering at least part of the area of the sea that is designated by the order made under subsection 35.1(2); or

(b) repeal the order.

Repeal of Minister's order

(2) The Governor in Council may repeal the order if the Governor in Council makes a regulation referred to in paragraph (1)(a).

6 Section 36 of the Act is amended by adding the following after subsection (3):

Inconsistency

(4) In the event of any inconsistency between an order made under subsection (1) and an order made under subsection 35.1(2), the order made under subsection (1) prevails to the extent of the inconsistency.

7 Sections 37 and 38 of the Act are replaced by the following:

Administration and Enforcement

Designation

8 Subsection 39(1) of the Act is replaced by the following:

Enforcement officers

39 (1) The Minister may designate persons or classes of persons as enforcement officers for the purposes of the administration and enforcement of this Act and the regulations.

9 The Act is amended by adding the following after section 39:

Enforcement Officer's Powers

10 (1) The portion of subsection 39.1(1) of the Act before paragraph (b) is replaced by the following:

Inspections

39.1 (1) For a purpose related to verifying compliance or preventing non-compliance with this Act and the regulations, an enforcement officer may enter and inspect any place, including any conveyance, in which the enforcement officer has reasonable grounds to believe, that there is any thing to which this Act or the regulations apply or any book, record, electronic data or other document relating to the application of this Act or the regulations, and the enforcement officer may, for that purpose,

(a) open or cause to be opened any container that the enforcement officer has reasonable grounds to believe contains that thing, book, record, electronic data or other document;

(2) Paragraph 39.1(1)(b) of the English version of the Act is replaced by the following:

(b) examine the thing and take samples free of charge;

(3) The portion of subsection 39.1(1) of the Act after paragraph (b) is replaced by the following:

(c) require any person to produce the book, record, electronic data or other document for examination or copying, in whole or in part;

(d) use or cause to be used any computer system or data processing system at the place being inspected to examine any data contained in, or available to, the system;

(e) reproduce any record or cause it to be reproduced from the data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

(f) use or cause to be used any copying equipment at the place being inspected to make copies of any book, record, electronic data or other document.

(4) Subsection 39.1(2) of the Act is replaced by the following:

Disposition of samples

(1.1) An enforcement officer may dispose of a sample taken under paragraph (1)(b) in any manner that the officer considers appropriate.

Seizure

(1.2) For the purposes of subsection (1), the enforcement officer may seize any thing that the enforcement officer has reasonable grounds to believe

(a) was used in the contravention of this Act or the regulations;

(b) is something in relation to which this Act or the regulations have been contravened; or

(c) was obtained by the contravention of this Act or the regulations.

Assistance

(1.3) The owner or the person in charge of the place, and every person found in the place, shall

(a) give the enforcement officer all assistance that is reasonably required to enable the officer to exercise their powers or to perform their duties or functions under this section; and

(b) provide the enforcement officer with any information or any book, record, electronic data or other document, and access to any data, that are reasonably required for that purpose.

Conveyance

(2) For the purposes of carrying out the inspection, the enforcement officer may stop a conveyance or direct that it be moved to any place, including in Canadian waters or the exclusive economic zone of Canada, where the inspection can be carried out.

Passage through private property

(2.1) An enforcement officer and any person accompanying them may enter and pass through private property, other than a dwelling-place, in order to gain entry to a place referred to in subsection (1). For greater certainty, neither person is liable for doing so.

Passage through private property by authorized person

(2.2) A person acting under the direction and control of an enforcement officer may, for the purposes of exercising the officer's powers or performing the officer's duties and functions under this section, enter and pass through private property, other than a dwelling-place, in order to gain entry to a marine protected area. For greater certainty, the person is not liable for doing so.

11 Section 39.2 of the Act is replaced by the following:

Direction and Detention of Ships

Direction of ship to place

39.2 An enforcement officer may direct a ship to move to any place in Canadian waters or the exclusive economic zone of Canada if they have reasonable grounds to believe that the ship or a person on board the ship has committed, is committing or is about to commit an offence under this Act in Canadian waters or the exclusive economic zone of Canada and that the ship was, is being or is about to be used in connection with the commission of the offence.

Detention order to ship

39.21 (1) An enforcement officer may make a detention order in relation to a ship if they have reasonable grounds to believe that the ship or a person on board the ship has committed an offence under this Act in Canadian waters or the exclusive economic zone of Canada and that the ship was used in connection with the commission of the offence.

Order in writing

(2) The detention order shall be in writing and addressed to all persons, at any port in Canada where the ship to which the order relates is or will be located, who are empowered to give a clearance in respect of the ship.

Service of order

(3) Notice of the detention order shall be served by delivering a copy of the notice personally to the master or another officer, the authorized representative, the owner or the operator of the ship, or if service cannot reasonably be effected personally, by posting a copy of the notice on any conspicuous part of the ship.

Duty after service of order

(4) Once notice of the detention order is served on any person referred to in subsection (3), the ship shall not move, other than in accordance with any conditions specified in the order, until the order has been rescinded.

No clearance after receiving order

(5) Subject to subsection (6), a person who has received the detention order shall not give clearance to the ship to which the order relates.

When clearance may be given

(6) A person who has received the detention order may give clearance to the ship to which the order relates if

(a) neither the ship nor any person is charged with the offence that gave rise to the making of the order within 30 days after the day on which the order is made;

(b) within 30 days after the day on which the order is made, the ship or a person is charged with the offence and every accused has appeared in Canada to answer to the charge;

(c) Her Majesty in right of Canada is given security, in a form determined by the Minister, for payment of the maximum fine that may be imposed as a result of a conviction of every accused and costs that might be incurred in proceedings in connection with the charge or charges, or payment of any lesser amount that is approved by the Minister;

(d) all proceedings in respect of the offence that gave rise to the making of the order are discontinued; or

(e) the order is rescinded by an enforcement officer.

Compliance Orders

Compliance order

39.22 (1) If an enforcement officer has reasonable grounds to believe that a person is committing an offence under this Act — or is about to commit an offence under this Act — the enforcement officer may issue a compliance order directing any person described in subsection (3) to take, at their own expense, any of the measures referred to in subsection (4) that the enforcement officer believes are reasonable in the circumstances, and consistent with the protection and preservation of the marine environment and with public safety, in order to cease the commission of the offence or to refrain from committing it.

Order to ship

(2) For the purposes of subsection (1), an order is deemed to have been given to the ship and is binding on it, if

(a) the order is given to the master or another officer, the authorized representative, the owner or the operator of the ship; or

(b) in the case of an order that cannot be given to any person referred to in paragraph (a) despite reasonable efforts having been made to do so, the order is posted on any conspicuous part of the ship.

Persons subject to compliance order

(3) Subsection (1) applies to any person who causes or contributes to, or is likely to cause or contribute to, the offence.

Specific measures

(4) The compliance order may require that the person to whom it is directed take one or more of the following measures:

- (a) do anything to comply with this Act or the regulations;
- (b) refrain from doing anything in contravention of this Act or the regulations;
- (c) cease any activity for a specified period or until the enforcement officer is satisfied that the activity is in compliance with this Act and the regulations;
- (d) move any conveyance to a location by the route and in the manner that the enforcement officer specifies;
- (e) unload or reload the contents of any conveyance; and
- (f) take any other reasonable measure that the enforcement officer considers necessary to facilitate compliance with the order—or to restore the components of the marine environment damaged by the offence or to protect the components of the marine environment that would be put at risk if the offence were committed—including
 - (i) maintaining records on any relevant matter,
 - (ii) reporting periodically to the enforcement officer, and
 - (iii) submitting to the enforcement officer any information, proposal or plan specified by the enforcement officer that sets out any action to be taken by the person with respect to the subject-matter of the order.

Contents of compliance order

(5) Subject to section 39.23, the compliance order shall be made in writing and shall set out

- (a) the name of the person or persons to whom it is directed;
- (b) the provisions of this Act or the regulations, or the order made under subsection 35.1 (2) or 36(1), that has been or that is about to be contravened;
- (c) the relevant facts surrounding the offence described in subsection (1);
- (d) the measures to be taken; and
- (e) the time or the day when each measure is to begin or the period during which it is to be carried out.

Statutory Instruments Act

(6) A compliance order is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

Order given orally

39.23 (1) In the case of exigent circumstances, a compliance order may be given orally on the condition that it is followed, within seven days after the day on which the oral order was issued, by a written order issued in accordance with section 39.22.

Exigent circumstances

(2) For the purposes of subsection (1), exigent circumstances include circumstances in which the delay necessary to issue a written order that meets the requirements of subsection 39.22 (5) would result in danger to human life or the marine environment.

Compliance with compliance order

39.24 (1) A person to whom a compliance order is issued shall, immediately on receipt of the order or a copy of it, or on being given an order orally under subsection 39.23(1), comply with the order.

No bar to proceedings

(2) The issuance of, or compliance with, a compliance order is not a bar to any proceedings against the person under this or any other Act in relation to the offence described in subsection 39.22(1).

Intervention by enforcement officer

39.25 (1) If a person to whom a compliance order is issued fails to take any measures specified in the order, an enforcement officer may take the measures or cause them to be taken.

Access to property

(2) An enforcement officer or other person authorized by an enforcement officer to take measures under subsection (1) may enter and have access to any place, other than a dwelling-place, and may do any reasonable thing that may be necessary in the circumstances.

Personal liability

(3) A person, other than a person described in subsection 39.22(3), who provides assistance or advice to the enforcement officer in taking the measures specified in an order or who takes any measures authorized or required by an enforcement officer under subsection (1) is not personally liable either civilly or criminally in respect of any act or omission in the course of providing assistance or advice or taking any measures under that subsection unless it is established that the person acted in bad faith.

Recovery of reasonable costs and expenses by Her Majesty

39.26 (1) Her Majesty in right of Canada may recover the costs and expenses of, and any costs and expenses incidental to, any measures taken under subsection 39.25(1) from any person referred to in subsection 39.22(3).

Costs reasonably incurred

(2) The costs and expenses may be recovered only to the extent that they can be established to have been reasonably incurred in the circumstances.

Liability

(3) The persons referred to in subsection (1) are jointly and severally, or solidarily, liable for the costs and expenses referred to in that subsection.

Procedure

(4) A claim under this section may be sued for and recovered by Her Majesty in right of Canada with costs in proceedings brought or taken in the name of Her Majesty in right of Canada in any court of competent jurisdiction.

Recourse or indemnity

(5) This section does not limit or restrict any right of recourse or indemnity that a person may have against any other person.

Limitation and prescription

(6) If events giving rise to a claim under this section occur, proceedings in respect of the claim may be commenced not later than five years after the day on which the events occur.

Things Seized, Detained, Abandoned or Forfeited

12 (1) The portion of subsection 39.3(1) of the Act before paragraph (a) is replaced by the following:

Custody of things seized

39.3 (1) Subject to subsections (2) to (3.1), if an enforcement officer seizes a thing under this Act or under a warrant issued under the *Criminal Code*,

(2) Section 39.3 of the Act is amended by adding the following after subsection (3):

Release of seized fish

(3.1) The enforcement officer who seizes any *fish* as defined in subsection 2(1) of the *Fisheries Act* may, at the time of the seizure, return to the water any fish that they believe to be alive.

13 Sections 39.5 and 39.6 of the Act are replaced by the following:

Liability for costs

39.5 The lawful owner and any person lawfully entitled to possession of any thing seized, detained, abandoned or forfeited under this Act are jointly and severally, or solidarily, liable for all the costs of inspection, seizure, detention, abandonment, forfeiture or disposition incurred by Her Majesty in right of Canada in excess of any proceeds of disposition of the thing that have been forfeited to Her Majesty under this Act.

Offences and Punishment

Offence and punishment – persons

39.6 (1) Every individual or corporation that contravenes subsection 39.21(5) or 39.24(1), a regulation made under paragraph 35(3)(c) or (d) or 52.1(a), or an order made under subsection 35.1(2) or 36(1) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000,

(ii) in the case of a corporation, other than a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

(iii) in the case of a corporation that the court has determined to be a small revenue corporation,

(A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$5,000 and not more than \$300,000, and

(B) for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000,

(ii) in the case of a corporation, other than a corporation referred to in subparagraph (iii),

(A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and

(iii) in the case of a corporation that the court has determined to be a small revenue corporation,

(A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Offence and punishment — ship

(2) Every ship that contravenes subsection 39.21(4) or 39.24(1), a regulation made under paragraph 35(3)(c) or (d) or 52.1(a), an order made under subsection 35.1(2) or 36(1) or a direction made under section 39.2 is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a ship of 7 500 tonnes deadweight or more,

(A) for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

(ii) in the case of a ship of less than 7 500 tonnes deadweight,

(A) for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

(b) on summary conviction,

(i) in the case of a ship of 7 500 tonnes deadweight or more,

(A) for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and

(ii) in the case of a ship of less than 7 500 tonnes deadweight,

(A) for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and

(B) for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

Offence and punishment — persons

(3) Every individual or corporation that contravenes subsection 39(6) or a regulation made under paragraph 52.1(b) or (c) is guilty of an offence and liable

(a) on conviction on indictment,

(i) for a first offence, to a fine of not more than \$500,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$100,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$200,000.

Offence and punishment — ship

(4) Every ship that contravenes any regulation made under paragraph 52.1(b) or (c) is guilty of an offence and liable

(a) on conviction on indictment,

(i) for a first offence, to a fine of not more than \$500,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$100,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$200,000.

Small revenue corporation status

(5) For the purposes of subsection (1), a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the year immediately before the day on which the offence is committed—or, if the offence is committed on more than one day, for the year immediately before the first day on which the offence is committed—were not more than \$5,000,000.

Non-application

(6) The minimum amounts of fines set out in this section do not apply to any proceeding brought in accordance with subsection 39.93(1) or under the *Contraventions Act*.

Liability of directors, officers or agents or mandataries

39.61 If a corporation or a ship owned or operated by a corporation commits an offence under section 39.6, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by that section for an individual in respect of the offence committed by the corporation or the ship, whether or not the corporation or the ship has been prosecuted or convicted.

Liability of owners, operators, masters and chief engineers of ships

39.62 If a ship commits an offence under section 39.6 and the owner, operator, master or chief engineer of the ship directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the owner, operator, master or chief engineer, as the case may be, is a party to and guilty of the offence and is liable on conviction to the penalty provided for by that section for an individual who commits an offence under that section, whether or not the ship has been prosecuted or convicted.

Defence

39.63 (1) A person shall not be found guilty of an offence under section 39.6, other than an offence consisting of a contravention of subsection 39(6), if the person establishes that they exercised due diligence to prevent the commission of the offence.

Defence — ship

(2) If a ship is prosecuted for an offence, only the persons referred to in subsection 39.67(5) may establish, for the purposes of subsection (1), that they exercised due diligence to prevent the commission of the offence.

Contravention of unpublished order

(3) A person shall not be found guilty of an offence consisting of a contravention of an order made under subsection 36(1) that, at the time of the alleged contravention, had not been published in the *Canada Gazette* unless it is proved that reasonable steps had been taken before that time to bring the purport of the order to the attention of those persons likely to be affected by it.

Continuing offence

39.64 (1) A person who commits or continues an offence on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Fines cumulative

(2) If a person is convicted of an offence involving more than one animal, plant, other organism or object, the fine to be imposed in respect of that offence may be, despite section 39.6, the total of the fines that would have been imposed if each of the animals, plants, organisms or objects had been the subject of a separate information.

Additional fine

(3) If a person is convicted of an offence and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order them to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under section 39.6.

Deeming — second and subsequent offence

(4) A conviction for a particular offence under section 39.6 is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the person has been previously convicted — under any Act of Parliament or an Act of a provincial legislature that relates to environmental or wildlife protection or conservation — of a substantially similar offence.

Application

(5) Subsection (4) applies only to previous convictions on indictment, to previous convictions on summary conviction and to previous convictions under any similar procedure under an Act of a provincial legislature.

Relief from minimum fine

39.65 The court may impose a fine that is less than the minimum amount provided for in section 39.6 if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship to the person who has been convicted of an offence. The court shall provide reasons if it imposes a fine that is less than the minimum amount.

Application of fines

39.66 (1) All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the *Contraventions Act*, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to the conservation, protection or restoration of marine protected areas, or for administering that Fund.

Recommendations of court

(2) The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

Application to ships

39.67 (1) The provisions of this Part—and those of any regulations or orders made under this Part or any regulations made under section 52.1—relating to indictable or summary conviction offences that apply to persons also apply to ships, with any modifications that the circumstances require.

Application of *Criminal Code*

(2) The provisions of the *Criminal Code* relating to indictable or summary conviction offences that apply to persons also apply to ships, with any modifications that the circumstances require.

Service

(3) When a ship is charged with an offence under section 39.6, the summons may be served by leaving it with the master or another officer, the authorized representative, the owner or the operator of the ship, or if it cannot reasonably be left with any of those persons, by posting a copy of it on any conspicuous part of the ship.

Appearance at trial

(4) If a ship is charged with an offence under section 39.6, the ship may appear by counsel or representative before the court. Despite the *Criminal Code*, if the ship does not so appear, a court may, on proof of service of the summons, proceed to hold the trial.

Proof of offence by ship

(5) If a ship is prosecuted for an offence under section 39.6, it is sufficient proof of the offence to establish that the act or omission that constitutes the offence was committed by the master of the ship or any other person on board the ship, whether or not the person on board has been identified or has been prosecuted for the offence.

Direction binding ship

(6) For the purpose of prosecuting a ship for contravening a direction made under section 39.2, any direction made under that section that is given to the master or another officer, the authorized representative, the owner or the operator of the ship is deemed to have been given to the ship and is binding on it.

Notice of detention order binding ship

(7) For the purpose of prosecuting a ship for contravening of subsection 39.21(4), the notice of the detention order served in accordance with subsection 39.21(3) is deemed to have been served on the ship and is binding on it.

Sentencing principles

39.68 (1) In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the *Criminal Code*, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a) the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b) the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

Aggravating factors

(2) The aggravating factors to be considered by the court in respect of a person convicted of an offence are the following:

- (a) the offence caused damage or a risk of damage to any marine resource, habitat or ecosystem;
- (b) the offence caused damage or a risk of damage to any unique, rare, particularly important or vulnerable marine resource, habitat or ecosystem;
- (c) the damage caused by the offence is extensive, persistent or irreparable;
- (d) the person committed the offence intentionally or recklessly;
- (e) the person failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;
- (f) by committing the offence or failing to take action to prevent its commission, the person increased revenue or decreased costs or intended to increase revenue or decrease costs;
- (g) the person committed the offence despite having been warned by the Minister or an enforcement officer of the circumstances that subsequently became the subject of the offence;
- (h) the person has a history of non-compliance with an Act of Parliament or an Act of a provincial legislature that relates to environmental or wildlife protection or conservation; and
- (i) after committing the offence, the person
 - (i) attempted to conceal its commission,
 - (ii) failed to take prompt action to prevent, mitigate or remediate its effects, or
 - (iii) failed to take prompt action to reduce the risk of committing similar offences in the future.

Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

Definition of *damage*

(4) For the purposes of paragraphs (2)(a) to (c), **damage** includes loss of use value and non-use value.

Reasons

(5) If the court decides not to increase the amount of the fine despite being satisfied of the existence of one or more of the aggravating factors set out in subsection (2), the court shall provide reasons for that decision.

14 (1) Section 39.9 of the Act is amended by striking out "and" at the end of paragraph (g) by adding the following after paragraph (h):

(i) directing the person to pay, in the manner specified by the court, an amount for monitoring the environmental effects of any activity or marine installation or structure on any marine resource, habitat or ecosystem in any marine protected area;

(j) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the conservation, protection or restoration of any marine protected area;

(k) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted with respect to the conservation, protection or restoration of any marine protected area;

(l) directing the person to pay, in the manner specified by the court, an amount to environmental or other groups to assist in their work related to marine protected areas; and

(m) directing the person to pay, in the manner specified by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment.

(2) Section 39.9 of the Act is renumbered as subsection 39.9(1) and is amended by adding the following:

Debt due to Her Majesty

(2) If the court makes an order under paragraph (1)(j) directing a person to pay an amount to Her Majesty in right of Canada, the amount constitutes a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

15 Section 39.10 of the Act is renumbered as section 39.91.

16 Section 39.11 of the Act is replaced by the following:

Limitation period

39.92 Proceedings by way of summary conviction in respect of an offence may be commenced not later than five years after the day on which the offence was committed.

2003, c. 22, par. 224(z.63)(E)

17 Section 39.12 of the Act is renumbered as section 39.93.

Transitional Provision

18 Section 39.11 of the *Oceans Act*, as it read immediately before the day on which section 16 of this Act comes into force, continues to apply in respect of an offence that was committed before that day.

R.S., c. 36 (2nd Supp.)

Canada Petroleum Resources Act

19 (1) The portion of subsection 12(1) of the English version of the *Canada Petroleum Resources Act* before paragraph (a) is replaced by the following:

Orders to prohibit activities in certain circumstances

12 (1) The Governor in Council may, by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity on the frontier lands or any portion of them that are subject to the interest of that interest owner, in the case of

(2) Subsection 12(1) of the Act is amended by striking out "or" at the end of paragraph (b) and by adding "or" at the end of paragraph (c) and by adding the following after paragraph (c):

(d) the designation of a marine protected area under subsection 35(3) or 35.1(2) of the *Oceans Act*.

(3) The portion of subsection 12(1) of the English version of the Act after paragraph (d) is repealed.

20 The Act is amended by adding the following after section 12:

Negotiations for compensation

12.1 (1) The Minister may enter into negotiations with an interest owner, in respect of all or any portion of the frontier lands subject to the interest, for a determination of any compensation that may be granted to the interest owner for the surrender of the interest to Her Majesty in right of Canada, if

(a) the interest is located in a marine protected area that is designated under the *Oceans Act* or in an area of the sea that, in the opinion of the Minister of Fisheries and Oceans, may be designated as a marine protected area under that Act; and

(b) the Minister of Fisheries and Oceans recommends that the interest be cancelled to give effect to the purpose of the designation or proposed designation of the marine protected area under section 35 of the *Oceans Act*.

Notice

(2) For the purposes of subsection (1), the Minister shall send a notice to the interest owner informing the interest owner of the Minister's intent to enter into negotiations with the interest owner within the period specified in the notice.

Power to cancel

(3) The Minister may, by order, cancel the interest in respect of all or any portion of the frontier lands, if

(a) the interest owner did not enter into negotiations with the Minister within the period specified in the notice sent to the interest owner;

(b) in the opinion of the Minister, the compensation to be granted to the interest owner for the surrender of the interest has not been determined during the negotiations within a reasonable time; or

(c) in the opinion of the Minister, the negotiations do not result in the surrender of the interest by the interest owner within a reasonable time even though the compensation to be granted to the interest owner has been determined during the negotiations.

Amount of compensation

(4) The Minister shall, in the order, specify the amount of the compensation to be granted to the interest owner in respect of the cancellation of the interest.

Interest becomes reserve lands

(5) If the interest referred to in subsection (1) is surrendered or cancelled in respect of all or any portion of the frontier lands, the lands or portions of lands that are subject to the interest become Crown reserve lands.

Return of deposit

(6) If the interest referred to in subsection (1) is surrendered or cancelled, any deposit balance with respect to the interest held by Her Majesty in right of Canada on behalf of the interest owner shall be returned to the interest owner, less any liability, either direct or by way of indemnity, owed by the interest owner to Her Majesty in right of Canada at the time of the surrender or cancellation.

Compensation — surrender

12.2 (1) If the interest owner surrenders an interest referred to in subsection 12.1(1), Her Majesty in right of Canada may grant any compensation that is determined by negotiations with the Minister.

Compensation — cancellation

(2) If the Minister cancels an interest referred to in subsection 12.1(1), Her Majesty in right of Canada may grant to the interest owner the compensation that is specified in an order made by the Minister under subsection 12.1(3), subject to section 106 in respect of the amount of that compensation.

No compensation

(3) A person shall not have any right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent or mandatary of Her Majesty in right of Canada for any acquired, vested, future or potential right or entitlement that is affected by a surrender or cancellation of an interest referred to in subsection 12.1(1), other than compensation that may be granted to an interest owner under this section.

Published under authority of the Speaker of the House of Commons

EXPLANATORY NOTES

Oceans Act

Clause 1: New.

Clause 2: New.

Clause 3: New.

Clause 4: (1) Relevant portion of subsection 35(1):

35 (1) A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section for special protection for one or more of the following reasons:

(2) Existing text of subsection 35(2):

(2) For the purposes of integrated management plans referred to in sections 31 and 32, the Minister will lead and coordinate the development and implementation of a national system of marine protected areas on behalf of the Government of Canada.

(3) Relevant portion of subsection 35(3):

(3) The Governor in Council, on the recommendation of the Minister, may make regulations

...

(b) prescribing measures that may include but not be limited to

(i) the zoning of marine protected areas,

(ii) the prohibition of classes of activities within marine protected areas, and

(iii) any other matter consistent with the purpose of the designation.

Clause 5: New.

Clause 6: New.

Clause 7: Existing text of sections 37 and 38:

37 Every person who contravenes a regulation made under paragraph 35(3)(b) or an order made under subsection 36(1) in the exercise of a power under that paragraph

(a) is guilty of an offence punishable on summary conviction and liable to a fine not exceeding \$100,000; or

(b) is guilty of an indictable offence and liable to a fine not exceeding \$500,000.

38 No person may be convicted of an offence consisting of a contravention of an order made under subsection 36(1) in the exercise of a power under paragraph 35(3)(b) that, at the time of the alleged contravention, had not been published in the *Canada Gazette* in both official languages unless it is proved that reasonable steps had been

taken before that time to bring the purport of the order to the attention of those persons likely to be affected by it.

Clause 8: Existing text of subsection 39(1):

39 (1) The Minister may designate any person or class of persons to act as enforcement officers for the purposes of this Act and the regulations.

Clause 9: New.

Clause 10: (1) to (3) Existing text of subsection 39.1(1):

39.1 (1) For the purpose of ensuring compliance with this Act and the regulations, an enforcement officer may, subject to subsection (3), at any reasonable time enter and inspect any place in which the enforcement officer believes, on reasonable grounds, there is any thing to which this Act or the regulations apply or any document relating to the administration of this Act or the regulations, and the enforcement officer may

(a) open or cause to be opened any container that the enforcement officer believes, on reasonable grounds, contains any such thing or document;

(b) inspect the thing and take samples free of charge;

(c) require any person to produce the document for inspection or copying, in whole or in part; and

(d) seize any thing by means of or in relation to which the enforcement officer believes, on reasonable grounds, this Act or the regulations have been contravened or that the enforcement officer believes, on reasonable grounds, will provide evidence of a contravention.

(4) Existing text of subsection 39.1(2):

(2) For the purposes of carrying out the inspection, the enforcement officer may stop a conveyance or direct that it be moved to a place where the inspection can be carried out.

Clause 11: Existing text of section 39.2:

39.2 For the purpose of ensuring compliance with this Act and the regulations, an enforcement officer may exercise the powers of search and seizure provided in section 487 of the *Criminal Code* without a warrant, if the conditions for obtaining a warrant exist but by reason of exigent circumstances it would not be feasible to obtain the warrant.

Clause 12: (1) Relevant portion of subsection 39.3(1):

39.3 (1) Subject to subsections (2) and (3), where an enforcement officer seizes a thing under this Act or under a warrant issued under the *Criminal Code*,

(2) New.

Clause 13: Existing text of sections 39.5 and 39.6:

39.5 The lawful owner and any person lawfully entitled to possession of any thing seized, abandoned or forfeited under this Act are jointly and severally liable for all the costs of inspection, seizure, abandonment, forfeiture or disposition incurred by Her Majesty in right of Canada in excess of any proceeds of disposition of the thing that have been forfeited to Her Majesty under this Act.

39.6 (1) Every person who contravenes subsection 39(6) or any regulation made under section 52.1

(a) is guilty of an offence punishable on summary conviction and is liable to a fine not exceeding \$100,000; or

(b) is guilty of an indictable offence and is liable to a fine not exceeding \$500,000.

(2) Where a person is convicted of an offence under this Act a second or subsequent time, the amount of the fine for the subsequent offence may, notwithstanding subsection (1), be double the amount set out in that subsection.

(3) A person who commits or continues an offence on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(4) A fine imposed for an offence involving more than one animal, plant or other organism may be calculated in respect of each one as though it had been the subject of a separate information and the fine then imposed is the total of that calculation.

(5) Where a person has been convicted of an offence and the court is satisfied that monetary benefits accrued to the person as a result of the commission of the offence,

(a) the court may order the person to pay an additional fine in an amount equal to the court's estimation of the amount of the monetary benefits; and

(b) the additional fine may exceed the maximum amount of any fine that may otherwise be imposed under this Act.

Clause 14: (1) Relevant portion of section 39.9:

39.9 Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

(2) New.

Clause 16: Existing text of section 39.11:

39.11 (1) Proceedings by way of summary conviction in respect of an offence may be commenced at any time within, but not later than, two years after the day on which the subject-matter of the proceedings became known to the Minister.

(2) A document appearing to have been issued by the Minister, certifying the day on which the subject-matter of any proceedings became known to the Minister, is admissible in evidence without proof of the signature or official character of the person appearing to have signed the document and is proof of the matter asserted in it.

Canada Petroleum Resources Act

Clause 19: (1) to (3) Relevant portion of subsections 12(1):

12 (1) The Governor in Council may, in the case of

...

by order, prohibit any interest owner specified in the order from commencing or continuing any work or activity on the frontier lands or any portion thereof that are subject to the interest of that interest owner.

Clause 20: New.

Bill C-55
(First Reading)
June 15, 2017

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