Comments on Bill C-47 (Part 4, Division 21, Subdivision B – Canada Shipping Act, 2001)
Presented to the Senate Standing Committee on Fisheries and Oceans
May 16, 2023

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1. INTRODUCTION

My name is Chris Hall and it's a pleasure to be here this evening on behalf of the Shipping Federation of Canada, which is the national association that represents the owners, operators and agents of the ocean-going ships that carry Canada's imports and exports to and from world markets.

We appreciate this opportunity to provide an ocean carrier perspective on Division 21 of Bill C-47 as relates to the proposed amendments to the *Canada Shipping Act*.

Our comments on these amendments can be grouped under two general themes – the first relates to the proposed imposition of certain new obligations on ship Masters and the consequences this may have, and the second relates to the nature of some of the powers being granted to the Minister, which we view as evidence of an ongoing erosion of the regulatory process in the marine sector.

2. NEW OBLIGATIONS IMPOSED ON MASTERS

Sections 373 and 374

To elaborate on our first theme – the imposition of new obligations on shipboard personnel - Section 373 of Bill C-47 provides that the Minister may direct a ship's Master to take measures that are necessary to avoid an undue risk because of unsafe conditions.

Our specific concern is not with this requirement in principle, but with one of the measures that the Minister may impose on the Master, which is to provide **any information** that is appropriate to assess or deal with risks to marine safety.

We are flagging this measure because it falls outside the scope of the other control measures set out in this section of the Act (such as the Master being directed to proceed by a specified route and manner, or to proceed a specified place to unload), and is much more broadly construed than those measures.

Indeed, the requirement for the Master to provide the Minister with any information that is appropriate to not only **address** but also **assess** risks to marine safety, casts a very wide net as to the nature and extent of information the Master may be required to disclose.

The fact that the Master would be exposed to potential criminal liability for failure to comply with the requirement would likely only serve to make this net even wider, as it would increase pressure to share as much information as possible, especially in context where the nature of the information to be shared is very loosely defined to begin with.

This measure could also potentially interfere with established safety protocols and reporting procedures on board, and break the chain of custody with respect to documenting and preserving information that is needed to not only deal with an evolving incident in real time, but to also address all the resulting impacts.

We have similar concerns with respect to section 374 of the proposed amendments, which extend the requirement to share "any" information to members of the ship's crew, which would have the added impact of undermining the normal flow of communications between Master and crew during a safety incident, and of even further degrading the all-important chain of custody as relates to critical information.

Sections 400 & 404

Another issue we wish to raise relates to section 400 of Bill C-47, which introduces a new requirement on the Master to "take all reasonable measures to ensure the protection of the marine environment" as a general obligation, along with a similar but more targeted obligation to take "all reasonable measures" in relation to discharges or risk of discharges of a pollutant.

Moreover, under section 404 of the bill, failure to comply with these new obligations can lead to a fine of up to $1,000,000, along with the possibility of imprisonment for up to 18 months.

I want to say from the outset that we fully recognise the need for Canada to have a strong legislative framework to protect its marine environment and for shipping activities to be conducted in accordance with that framework.

However, we are concerned that the proposed amendments are not sufficiently aligned with Canada's obligations under a number of international laws it has acceded to, including the UN *Convention on the Law of the Sea* (known as UNCLOS) and the IMO *Convention on the Prevention of Pollution from Ships* (known as MARPOL).

In order to address this concern, we recommend that the scope of what constitutes **reasonable measures** to protect the marine environment under section 400 of the proposed amendments be clarified to encompass any measure taken in accordance with applicable international law, which would help frame and circumscribe the Master's responsibility in a more appropriate manner.

We have included the wording for such an amendment in the attached annex to our speaking notes.

We also have concerns regarding the nature of penalties that can be imposed on the Master under section 404 of the proposed amendments, which can include up to 18 months in prison.

This represents a significant divergence from international law - and the UNCLOS Convention in particular - under which penal sanctions for violations of national laws relating to pollution by a foreign flag vessel are limited to monetary fines, except in cases of willful and serious acts of pollution in the territorial sea.

In other words, the international legal framework to which Canada has committed does not impose criminal liability (meaning imprisonment) on seafarers in cases of accidental pollution.

In order to ensure that Bill C-47's new obligations are enforced in accordance with that framework, we recommend that section 404 be amended to ensure that imprisonment of a master for failing to take all reasonable measures to protect the marine environment should occur only in cases of willful and serious acts of pollution, as per international law and Part XII of UNCLOS in particular.

We have included the wording for such an amendment in the attached annex to our speaking notes.

3. EROSION OF THE REGULATORY PROCESS

As I noted at the beginning of my remarks, our second major theme regarding the proposed changes to CSA 2001 relates to the ongoing erosion of the normal regulatory process we are seeing in the marine mode.

More specifically, we believe that the *Canada Shipping Act* has increasingly opened the door to the use of extra-regulatory instruments such as Interim Orders and Ministerial Orders to regulate certain aspects of shipping activity – many of which were first introduced in 2018 - also by means of an omnibus budget implementation bill.

Bill C-47 further extends the reach of these extra-regulatory instruments in two important ways.

Section 353

First, section 353 extends the scope of **Interim Orders** by providing that the Minister may enter into agreements with third parties respecting their administration and enforcement.

Just to provide some context, Interim Orders may be imposed in cases where immediate action is required to deal with a direct or indirect risk to marine safety or the marine environment.

These orders are not subject to the basic safeguards provided in the regulatory process (including pre-publication, consultation with stakeholders and impact assessment) and could remain in effect for a period of up to three years.

Section 353 goes even further by essentially providing that the administration and enforcement of an Interim Order could be outsourced to third parties, meaning that entities such as local authorities and representatives of external groups could have the authority to ensure a vessel's compliance with any of the broad range of activities that an Interim Order might cover, such as vessel design and equipment, compulsory routes, navigational procedures, etc.

Section 381

A related concern can be found in section 381 of the proposed amendments, which gives the Minister power to suspend or modify the operation of some GIC regulations (including those related to navigation, anchorage, mooring or berthing of vessels) by means of a **Ministerial Order**.

Like Interim Orders, Ministerial Orders also exist outside the normal regulatory process and, despite their potentially significant impacts on shipowners and their vessels, are subject to minimal publication requirements (within 23 days after they are made) and can remain in effect for a period of up to two years.

Given their scope and potential duration, we believe that these kinds of orders should be implemented with a great deal of caution and that their use should be circumscribed by the appropriate safeguards, including consultation with relevant entities before being made.

It is worth noting that we first raised these issues with Parliament in 2018 and continue to remain concerned with the relatively uncircumscribed powers given to the Minister with respect to the use of extra-regulatory powers in the marine sector.

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Thank you for this opportunity to comment on some of the key concerns that Bill C-47 raises from an ocean shipping perspective. I would be happy to answer any questions you may have.

ANNEX – PROPOSED AMENDMENTS

Our proposed amendments to Bill C-47 are underlined and italicized below:

Proposed Amendment 1:

Section 400 of Bill C-47

The Act is amended by adding the following at the end of section 186.3 (Masters – Protection of the marine environment):

(3) *Any measures taken in accordance with applicable international law constitute "reasonable measures" for the purpose of this section, unless otherwise provided in regulations or ministerial orders adopted under this Act.*

Proposed Amendment 2:

Section 404 of Bill C-47

The Act is amended by adding the following at the end of section 191 (Offences and Punishment)

(4) *Offences under this Act will be administrated in accordance with applicable international law, including Section 7 of Part XII of the 1982 United Nations Convention on the Law of the Sea.*