

**BILL C-3: AN ACT TO AMEND THE CANADA SHIPPING
ACT, THE CANADA SHIPPING ACT 2001, THE CANADA
NATIONAL MARINE CONSERVATION AREAS ACT AND
THE OCEANS ACT**

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28 October 2004



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LEGISLATIVE HISTORY OF BILL C-3

HOUSE OF COMMONS

Bill Stage	Date
First Reading:	8 October 2004
Second Reading:	18 October 2004
Committee Report:	10 December 2004
Report Stage:	11 March 2005
Third Reading:	11 March 2005

SENATE

Bill Stage	Date
First Reading:	21 March 2005
Second Reading:	14 April 2005
Committee Report:	9 June 2005
Report Stage:	
Third Reading:	22 June 2005

Royal Assent: 23 June 2005

Statutes of Canada 2005, c.29

N.B. Any substantive changes in this Legislative Summary which have been made since the preceding issue are indicated in **bold print**.

Legislative history by Peter Niemczak

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PUBLIÉ EN FRANÇAIS

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BILL C-3: AN ACT TO AMEND THE CANADA SHIPPING
ACT, THE CANADA SHIPPING ACT 2001, THE CANADA
NATIONAL MARINE CONSERVATION AREAS ACT AND
THE OCEANS ACT*

BACKGROUND

Bill C-3 was introduced on 8 October 2004 as an administrative bill. It is intended to:

- clarify the December 2003 transfer of authorities respecting marine safety and security from the Department of Fisheries and Oceans to the Department of Transport;
- consolidate policy responsibility for all aspects of marine safety in the Department of Transport;
- improve the responsiveness, coherence and consistency of the marine regulatory framework for Canadians;
- enhance service delivery in these matters for all stakeholders;
- ensure that roles and responsibilities of the government remain the same, in whatever department they may be found;
- preserve the authority of the Department of Fisheries and Oceans to carry out the operational role assigned to it;
- ensure that the powers, duties and functions transferred from the Minister of Fisheries and Oceans to the Minister of Transport are unambiguous in order to prevent litigation or any contentious issues; and
- preserve the logic and coherence of the relevant statutes.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this legislative summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both Houses of Parliament, receive Royal Assent, and come into force.

It is important to note that the reassignment of responsibilities in December 2003 in effect transferred all Canadian Coast Guard policy responsibilities and certain operational responsibilities relating to pleasure craft safety, marine navigation services, pollution prevention and response, and navigable waters protection to Transport Canada.

To effect these changes, Bill C-3 proposes amendments to certain provisions of the *Canada Shipping Act*, the *Canada Shipping Act, 2001*, the *Canada National Marine Conservation Areas Act* and the *Oceans Act*.⁽¹⁾ As Bill C-3 does not make other changes to these statutes, it has been presented as a “policy neutral” bill. The changes introduced in Bill C-3 reportedly are changes that marine stakeholders have requested and that are welcomed by the Department of Fisheries and Oceans and the Department of Transport.

The government has indicated that a consolidation of responsibilities within the Department of Transport is expected to improve efficiency in both marine policy and operations. By uniting the safety requirements that apply to pleasure craft and commercial vessels, Bill C-3 should promote the harmonization of those requirements. In the area of oil pollution prevention and response, the proposed amendments are expected to reduce the complexity of responsibilities for prevention and response for both shore facilities and vessels.

DESCRIPTION AND ANALYSIS

Bill C-3 contains 37 clauses and affects four statutes:

- clauses 1-14 amend the *Canada Shipping Act* (CSA);
- clauses 15-33 amend the *Canada Shipping Act, 2001* (CSA 2001);
- clauses 34-35 amend the *Canada National Marine Conservation Areas Act* (CNMCAA); and
- clause 36 amends the *Oceans Act*.

The coming into force provision is contained in clause 37.

The following clause-by-clause analysis is presented by Act, with the clauses grouped under the Part of the Act affected and the heading within that Part.

(1) The *Canada Shipping Act, 2001* will replace the *Canada Shipping Act* when the former enters into force, which is expected to be in late 2006.

A. *Canada Shipping Act*

1. Interpretation

Clause 1 changes the meanings of “Minister” and “Department” in section 2 of the CSA. At present, Minister and Department mean Department of Fisheries and Oceans (DFO) and Minister of Fisheries and Oceans (MFO) for the purposes of certain sections of the CSA; otherwise, references to Minister or Department in the CSA refer to the Minister of Transport (MT) and the Department of Transport (DT).

Clause 1 reduces the number of sections where Minister and Department mean DFO and MFO. Only references under Part VII (Lighthouses, Buoys and Beacons, and Sable Island) of the CSA take these meanings.

2. Part 0.1 – General

a. Ministerial Responsibility

Clause 2 replaces the heading before section 7 in the French version of the CSA (Responsabilités des ministres) with Responsabilité du Ministre, to reflect the fact that section 7 will speak only to the responsibilities of the MT.

Clause 3 amends section 7 of the CSA, which identifies the MT as the Minister responsible for administering the Act excepting:

- where otherwise provided; and
- in matters relating to the safety and licensing of pleasure craft.

At present, subsection 7(2) of the CSA makes the MFO responsible for matters relating to the safety and licensing of pleasure craft. Clause 3 eliminates subsection 7(2), with the result that section 7 refers only to the MT as the Minister responsible for administering the Act, except as otherwise provided. As such, the MT assumes responsibility for the safety and licensing of pleasure craft from the MFO.

3. Part V – Safety

a. Safety of Ships, Passengers and Crews

Clause 4 amends subsection 385(1) to clarify that the MFO may designate rescue coordinators to organize search and rescue operations in Canadian waters and off the coasts of Canada, as that authority remains with the MFO.

4. Part VI – Wrecks, Salvage, and Investigations Into Shipping Casualties

a. Superintendence

Subsections 422(1) and (2) of the CSA divide the superintendence of matters relating to salvage and shipping casualties, and wrecks and receivers of wrecks, between the MT and the MFO. Clause 5 replaces subsections 422(1) and (2) with proposed section 422, which confers on the MT the general superintendence of matters relating to salvage, wrecks, receivers of wrecks and shipping casualties.

5. Part VII – Lighthouses, Buoys and Beacons, and Sable Island

Clause 6 adds new section 516.1, which defines “Minister” as the MFO and “Department” as the DFO for the purposes of Part VII of the CSA, because the MFO retains responsibility for this Part of the Act, other than the responsibility for regulations respecting aids to navigation.

Clause 7 replaces sections 518 and 519 of the CSA. Proposed section 518 clarifies that it is the MFO who may appoint any keepers or other officers that are necessary for the purposes of Part VII of the CSA. The existing section 518 does not specify who may appoint keepers, etc. Section 519 is replaced by proposed sections 519 and 519.1; under these sections, the power to make recommendations with respect to certain regulations that the Governor in Council may make is divided between the MFO and the MT as follows:

- Under proposed section 519, the MT may make recommendations to the Governor in Council regarding regulations respecting aids to navigation or with respect to prescribing fines for contraventions of regulations made under section 519.
- Under proposed section 519.1, the MFO may make recommendations to the Governor in Council regarding regulations respecting Sable Island and St. Paul Island, shipwrecked persons and property, and fines for contraventions of regulations made under section 519.1.

At present, the Governor in Council may make regulations under section 519 without the recommendation of a Minister.

6. Part IX – Navigation, Collisions, Operation, and Limitation of Liability

a. Vessel Traffic Services

Clauses 8 and 9 amend the power of the Governor in Council to make regulations under sections 562.15 and 562.16 by making them conditional on the recommendations of the MT. Section 562.15 concerns the making of regulations respecting the clearance of ships to enter Canadian waters; section 562.16 concerns the making of regulations respecting Vessel Traffic Services Zones.

7. Part XV – Pollution Prevention and Response

a. Interpretation

Clause 10 amends the definitions in section 654 of the CSA. It repeals the definition of “Commissioner” as the Commissioner of the Canadian Coast Guard, signifying that the authority of the Commissioner in Part XV now rests with the MT. It also amends the definition of “response organization,” substituting the word “Minister” for “Commissioner” as the issuer of a certificate of designation.

b. OPRC Convention

Clause 11 repeals section 660.1 of the CSA, which refers to the Commissioner as the “competent national authority” for the purposes of Article 6 of the International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (the OPRC Convention). This renders both the MT and the Commissioner competent national authorities with respect to this Convention.

Clause 12 replaces subsections 660.10(1) to (3), which have to do with the establishment and membership of advisory councils. The proposed subsections are virtually identical to the current subsections except that the references to the Commissioner are replaced by references to the MT. Clause 12 also replaces subsections 660.10(6) and (7) as a consequence, stating that the council members’ expenses are to be reimbursed according to Treasury Board directives (subsection 660.10(6.1)) and that the advisory councils report to any

standing committee of either House of Parliament that normally considers matters relating to transportation or the environment (subsection 660.10(7)).

Clause 13 updates paragraph 660.11(1)(a) of the CSA to reflect the repeal of section 660.1 and proposes some other minor word-crafting in the existing provision.

8. Part XVI – Civil Liability and Compensation for Pollution

a. Application of Part

Clause 14 replaces the word “Minister” with “Minister of Fisheries and Oceans” in subsection 678(1) to reflect that authority remains with the MFO. This subsection allows for measures to be taken if it is believed that a ship has discharged, is discharging or is likely to discharge a pollutant.

B. *Canada Shipping Act, 2001*

1. Regulations

Clause 15 replaces section 4 of the CSA 2001, which currently permits the Governor in Council, on the joint recommendation of the MFO and the MT, to make regulations respecting pleasure craft. Proposed section 4 no longer provides for recommendations from the MFO on any regulations respecting pleasure craft made under the CSA 2001; that responsibility now rests solely with the MT.

2. Part 1 – General

a. Regulations

Clause 16(1) replaces paragraphs 35(1)(e) to (g), which list matters in respect of which the Governor in Council can make regulations on the recommendation of the MT. The substance of the regulations under these paragraphs concerns:

- record keeping, information management and reporting for the purposes of certain Parts of the CSA 2001 (35(1)(e));
- the form and manner of giving notice under certain Parts of the CSA 2001 (35(1)(f)); and
- the setting and payment of fees for services provided in the administration of certain Parts of the CSA 2001 (35(1)(g)).

At present, paragraphs (e), (f) and (g) apply to Parts 1, 2, 3, 4, 9 and 11 of the Act. Paragraphs (e) and (g) also apply to Part 6. Proposed paragraphs 35(1)(e) to (g) expand the existing list of Parts to include Parts 7 (Wreck),⁽²⁾ 8 (Pollution Prevention and Response – Department of Transport and Department of Fisheries and Oceans), 10 (Pleasure Craft) and regulations made under subsection 136(1) of the CSA 2001 to reflect the new division of responsibilities.

Clause 16(2) amends subsection 35(3) of the CSA 2001, which lists matters for which the Governor in Council can make regulations on the recommendation of the MFO. The amendments change the references to the heading of Part 8 in the list to reflect the amendment to the heading proposed in clause 20, and restrict the MFO's power to make recommendations to the extent to which the Minister is responsible for the listed parts of the Act.

3. Part 4 – Safety

a. Authorized Representatives, Masters, Crew Members and Other Persons

Clause 17 amends section 116 of the CSA 2001, which generally prohibits persons from boarding a vessel without permission, to recognize the right of access of pollution response officers conferred by the new section 175.1.

4. Part 5 – Navigation Services

a. Regulations

Clause 18 proposes to amend subsection 136(1) of the CSA 2001 to specify that the regulation-making powers of the Governor in Council under this section are now on the recommendation of the MT. Also, proposed subsection 136(1) repeals the administration and control of Sable Island and maritime search and rescue from the list of paragraphs describing what can be regulated on the recommendation of the MT under this section, and adds a paragraph respecting vessel traffic that is currently under subsection 136(2).

Proposed subsection 136(2), which refers to the regulation-making powers of the Governor in Council on the recommendation of the MFO, now includes the paragraph concerning the administration and control of Sable Island, the one concerning maritime search and rescue, and one concerning the specification of classes of persons to ensure compliance with regulations respecting Sable Island.

(2) With the exception of regulations respecting setting and payment of fees for services under section 163 in Part 7.

5. Part 7 – Wreck

a. Interpretation

Clause 19 changes the meaning of “Minister” from the MFO to the MT in section 153 of the CSA 2001 for the purposes of Part 7. Part 7 deals with finding, receiving, salvaging and disposing of wrecks, as well as making regulations respecting wrecks.

6. Part 8 – Pollution Prevention and Response – Department of Fisheries and Oceans

a. Heading Change

Clause 20 amends the title of Part 8 (Pollution Prevention and Response – Department of Fisheries and Oceans) to include the DT, as it now has responsibilities under this Part.

b. Interpretation

Clause 21 changes the meaning of “Minister” from the MFO to the MT in section 165 of the CSA 2001 for the purposes of Part 8, to reflect the expansion in the responsibilities of the MT with respect to pollution prevention and response.

c. Discharges of Oil

Clause 22 replaces “Minster of Transport” with “Minister” in paragraph 167(1)(b), which requires that vessels have on board a declaration in the form specified by the MT. This is because “Minister” is now defined to mean “Minister of Transport.”

d. Pollution Prevention Officers

Clause 23 has three functions:

- it amends the heading before section 174 (Pollution Prevention Officers) to include pollution response officers;
- it replaces section 174 with proposed sections 174 and 174.1, which concern the powers of the Minister and the MFO to designate pollution prevention officers and pollution response officers, respectively; and
- it replaces section 175 with proposed sections 175 and 175.1, which concern the powers of the pollution prevention officers and pollution response officers, respectively.

At present, pollution prevention officers are designated by the MT and under subsection 175(1) may undertake inspections and may request documents required under this Part from organizations and facilities. Subsection 175(2) currently outlines the powers of a pollution prevention officer when he or she suspects that a vessel may discharge or may have discharged a pollutant.

Clause 23 proposes to share the functions of pollution prevention officers with the new pollution response officers that are designated by the MFO. Pollution response officers, in addition to directing vessels, may also request documents required under this Part from organizations and facilities. The provisions from existing subsection 175(2) have been reproduced in proposed subsection 175.1(2), now allocating these powers with respect to the discharge of a pollutant to pollution response officers.

Clause 24 amends subsection 176(1), which currently describes what pollution prevention officers can do in exercising their powers under Part 8 of the CSA 2001. Proposed subsection 176(1) adds a reference to “pollution response officer.” Clause 24 also amends subsection 176(3) of the English version of the CSA 2001 to provide that a pollution response officer may receive authorization by a justice to enter living quarters in the same manner as a pollution prevention officer.

e. Detention of Vessels

Clause 25 amends section 177 of the CSA 2001 by replacing the words “pollution prevention officer” with pollution response officer and “Minister” with Minister of Fisheries and Oceans in the following subsections:

- 177(1), which currently permits a pollution prevention officer to detain a vessel that the officer believes has committed an offence under Part 8;
- 177(6), which currently requires that a pollution prevention officer rescind a detention order if measures have been taken and a security has been deposited with the Minister;
- 177(10), which currently allows the Minister to use the security deposit to reimburse any expenses incurred by Her Majesty in Right of Canada, pay any outstanding fines and to return the remainder;

and in paragraph

- 177(4)(b), which currently identifies the Minister as the keeper of a security deposit to rescind a detention order.

These changes reflect that this section remains under the responsibility of the MFO and consequently the pollution response officers.

Clause 26 amends section 179 by replacing the word “Minister” with Minister of Fisheries and Oceans several times. These changes reflect that this section remains under the responsibility of the MFO, who may direct the movement of detained vessels.

f. Response Measures

Clause 27 amends section 180, which currently permits the Minister to take and monitor measures, as well as direct measures to be taken, if the Minister believes that pollutants are being or have been discharged. The proposed section 180 replaces the word “Minister” with Minister of Fisheries and Oceans to reflect that this section remains under the responsibility of the MFO.

g. Offences and Punishment

Subsection 183(1) of the CSA 2001 lists the sections of the Act which, when contravened, amount to an offence with respect to pollution response. Clause 28 replaces the reference to subsection 175(2) in the list with proposed section 175.1(2), which refers to the powers of pollution response officers to make directions resulting from the discharge or possible discharge of a pollutant. This is a consequence of renumbering the provisions in Part 8.

7. Part 9 – Pollution Prevention – Department of Transport

a. Interpretation

Clause 29 amends the meaning of “pollutant” in section 185. This is a housekeeping amendment to reflect the new heading of Part 8 of the CSA 2001, to which clause 20 adds the “Department of Transport.”

b. Directions to Vessels

Clause 30 adds paragraph 189(a.1) to section 189 of the CSA 2001, which currently authorizes the MT to direct a vessel that may discharge or may have discharged a pollutant to provide appropriate information. The new paragraph 189(a.1) provides the MT with the additional power previously found in paragraph 175(1)(c) to direct a vessel to provide information concerning its shipboard oil pollution emergency plan and the implementation of the plan.

8. Part 10 – Pleasure Craft

a. Interpretation

Clause 31 changes the meaning of “Minister” from the MFO to the MT in section 194 of the CSA 2001 for the purposes of Part 10. Part 10 concerns inspections, investigations, safe operation of pleasure craft, pleasure craft licences, regulations and offences and punishment respecting pleasure craft.

9. Part 11 – Enforcement – Department of Transport

a. Interpretation

Clause 32 limits the definition of “relevant provision,” which the MT is responsible for administering, to provisions the MT was responsible for administering before the reassignment of responsibilities in December 2003. At present, the meaning of “relevant provision” in section 210 excludes only a provision of regulations made under subsection 136(2) in so far as it applies to vessels that are not Canadian or foreign.

In restoring the meaning of “relevant provision” to the meaning before the transfer, clause 32 proposes to exclude the following sections of the Act:

- subsection 40(1), which describes contraventions of regulations made under paragraph 35(1)(e) (i.e., regulations regarding record keeping, information management and reporting) in relation to:
 - Part 7 (Wrecks);
 - Part 8 (Pollution Prevention and Response – Department of Transport and Department of Fisheries and Oceans); and
 - Part 10 (Pleasure Craft);

- any provision in Parts 5 (Navigation Services), 7 (Wreck), 8 (Pollution Prevention and Response – Department of Transport and Department of Fisheries and Oceans) and 10 (Pleasure Craft), or a provision of any regulation made under those Parts;

and to add, to the list of relevant provisions, a provision of the regulations made under proposed paragraph 136(1)(f) in Part 5, in so far as it applies to vessels.

10. Part 12 – Miscellaneous

a. Proof of Offences by Vessels

Clause 33 amends subsection 252(1) of the CSA 2001, which identifies the persons on board a vessel who, by having committed an offence or an omission, provide sufficient proof in the prosecution of a vessel. Proposed subsection 252(1) adds a pollution response officer to the list of persons on board a vessel (including inspectors and pollution prevention officers) who cannot provide such proof. Pollution response officers are new, having been created in clause 23.

C. *Canada National Marine Conservation Areas Act*

1. Administration

Clause 34 replaces subsection 9(4) of the CNMCAA, which at present subjects the provisions of a management plan or an interim management plan respecting:

- fishing;
- aquaculture;
- fisheries management;
- marine navigation; and
- marine safety

to an agreement between the Minister of Canadian Heritage and the MFO.

Clause 34 proposes two subsections 9(4) and 9(4.1) in place of subsection 9(4):

- Proposed subsection 9(4) makes the provisions of a management plan or an interim management plan respecting fishing, aquaculture and fisheries management subject to an agreement between the Minister of Canadian Heritage and the MFO.
- Proposed subsection 9(4.1) makes the provisions of a management plan or an interim management plan respecting marine navigation and marine safety subject to an agreement between the Minister of Canadian Heritage, the MT and the MFO.

2. Regulations

Clause 35 replaces subsections 16(2) and 16(3) of the CNMCAA. It removes from the MFO the power to recommend the making of regulations that restrict or prohibit marine navigation or activities related to marine safety (subsection 16(2)); and it removes the limit on the extent of regulations restricting or prohibiting marine navigation or activities related to marine safety that may be made on the recommendation of the Minister of Canadian Heritage and the MFO (subsection 16(3)).

D. *Oceans Act*

1. Part III – Powers, Duties and Functions of Minister

a. Coast Guard Services

Clause 36 amends subsection 41(1) of the *Oceans Act*, which describes the duties, powers and functions of the MFO with respect to coast guard services. Clause 36 proposes to replace paragraphs 41(1)(c) and 41(1)(d), listing pleasure craft safety and marine pollution prevention and response, with a single paragraph 41(1)(d)⁽³⁾ covering marine pollution response. This removes the MFO from responsibilities towards pleasure craft and marine pollution policy, which were transferred to the MT and DT in other clauses of Bill C-3.

E. Coming Into Force

Clause 37 provides that Bill C-3 will come into force by order of the Governor in Council.

(3) However, as paragraphs 41(1)(c) and (d) are replaced by a single paragraph, it might be more logical to number this new paragraph as 41(1)(c), and to renumber the existing paragraph 41(1)(e) as 41(1)(d).

COMMENTARY

During debate in the House of Commons, the opposition parties criticized the lack of substance in Bill C-3. Citing recommendations from a unanimous report tabled by the House of Commons Standing Committee on Fisheries and Oceans in May 2004, they claim that Bill C-3 should effect real change. As drafted, Bill C-3 simply formalizes a shift in responsibilities for pleasure craft and marine safety from DFO to DT.

Members of Parliament have also expressed the concern that the MT will be focused on development instead of conservation when applying his or her new powers over marine safety on Canadian waterways.