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OCEANS ACT CANADA PETROLEUM RESOURCES ACT

**BILL TO AMEND—SECOND READING—
DEBATE ADJOURNED**

Speech by:

The Honourable Patricia Bovey

Tuesday, May 1, 2018

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Hon. Patricia Bovey: Honourable senators, Bill C-55, An Act to amend the Oceans Act and the Canada Petroleum Resources Act has now come to the Senate from the other place. It is my privilege to be its sponsor in this chamber.

In presenting this bill, I want to follow the sage advice and six key questions put by author Rudyard Kipling when resolving any issue: what, where, why, when, who and how.

First, what. The principal goal of Bill C-55 is safeguarding one of Canada's most valuable assets — our oceans — through establishing conservation protection of Canada's marine areas, maintaining their ecological integrity and increasing the protected areas to 10 per cent of Canada's oceans and shorelines.

Second, where. These are to include our three oceans: the Pacific, the Atlantic and the Arctic. In 2010 the former government committed Canada to meeting the international target under the Convention on Biological Diversity and that same goal was part of the current government's election platform.

Where are we now? Currently 7.7 per cent of our coastal and marine environments are protected by the range of federal and provincial marine-protected areas and area-based conservation targets. Thus, we need to achieve a further 2.3 per cent to reach the 10 per cent target.

Bill C-55 is part of the plan to reach that 10 per cent. It is put forward as a plan based on science, Indigenous knowledge, consultations and collaborations.

Third, why? The key issue Bill C-55 seeks to address is the length of time it takes to designate ocean areas as protected. Currently it is 7 to 10 years, a time during which the particular area has either no or limited protection.

This bill establishes interim protection while allowing for ecological, economic, social and cultural analysis in addition to consultation and collaboration.

As background, I should underline that Canada's coastline, surrounded by three oceans, is the longest in the world and has an ocean area equivalent to about 70 per cent of Canada's land mass. The three oceans hold resources which support multiple aspects of our economy, from transportation to aquaculture and fisheries, and contribute 346,000 jobs and \$36 billion to Canada's GDP.

Our oceans are also part of global challenges, are keys to food security, climate change and medical care as well as supporting cultural and recreational activities. Our oceans are absolutely essential to sustain our economic, cultural and spiritual lives.

The "why" also underlines that our responsibility to manage our ocean resources sustainably for future generations is paramount, and this includes conserving marine ecosystems and safeguarding areas where fish and marine life are able to eat, reproduce and grow, especially given their shifts due to climate change. Protecting the life cycle of marine life and productive oceans is critical in retaining jobs in the related sectors.

The fourth question is when. We need to meet these targets by 2020.

That, of course, evokes the fifth question: Who? Bill C-55 amends the Oceans Act, updating and modernizing it for mid-term and long-term benefit. It clarifies the responsibility of the Minister of Fisheries and Oceans to establish a national network of marine-protected areas. It empowers the minister to designate marine-protected areas by order and prohibits certain activities in those areas. It provides that within five years after the day on which the order of the minister designating a marine-protected area comes into force that the minister is to make a recommendation to the Governor-in-Council to make regulations to replace that order or he or she is to repeal it.

Bill C-55 provides 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). It updates and strengthens the power of enforcement officers. It updates 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 it creates 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.

[Translation]

The bill also amends the Canada Petroleum Resources Act to, among other things, 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; empower the competent minister under the Canada Petroleum Resources Act to cancel an interest that is located in a designated marine protected area or in an area of the sea that may be so designated; and provide for compensation to the interest owner for the cancellation or surrender of such an interest.

[English]

These amendments give the minister the authority to prohibit authorized oil and gas exploration activities like seismic testing, drilling or production within a designated MPA.

This act is, in essence, to ocean areas what Parks Canada is to designated areas on land — areas that are supported, used and heralded by all Canadians. The goals of both Parks Canada and the marine protected areas are similar. The MPAs are to conserve

and protect marine areas for the purposes of maintaining ecological integrity, including the assurance that the structure, composition and function of ecosystems be undisturbed by any human activity; that the natural ecological processes are intact and self-sustaining; that they evolve naturally; and that the ecosystems' capacity for self-renewal and their biodiversity are maintained.

As one who has lived in provinces bordered by the Pacific and Arctic Oceans and visited all the provinces surrounded by the Atlantic Ocean, I certainly support this goal.

To achieve this, one must ask the all-important question: How is this goal going to be achieved? Simply put, the interim protection MPA will offer protection to an area by freezing the footprint for five years, during which scientific research and community and sector consultation will be undertaken. This is critically important for those who make their living from harvesting shellfish, finfish or other marine organisms.

Under the provisions of Bill C-55, the minister is to lead and coordinate the development and implementation of a national network of marine protected areas and the establishment of clearly identified objectives set with regard to each marine protected area. The minister is also to ensure that this network will cover diverse habitat types, biogeographic regions and environmental conditions.

[*Translation*]

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), in a manner that is not inconsistent with a land claims agreement that has been given effect and has been ratified or approved by an Act of Parliament. The minister must list the classes of activities that are ongoing activities in the marine protected area, including those that were lawfully carried out the year immediately before the day on which the order comes into force and do not require an authorization and those authorized under any applicable federal or provincial laws. Prohibited activities are expected to be examined in committee. They are defined as those that disturb, damage, destroy or remove from that marine protected area any unique geological or archeological features or any living marine organism or any part of its habitat.

By strengthening the enforcement powers, and subsequent fines and penalties, Bill C-55 brings the Oceans Act in line with Canada's other environmental laws. First, with regard to the application of the current act and regulations, the minister has the right, under the act, to designate persons or classes of persons as enforcement officers. Under the act, enforcement officers may enter and inspect any place if they have reasonable grounds to believe that there is anything to which the act or the regulations apply, including any book, record, electronic data or other document. Enforcement officers have the right to seize anything that, in their opinion, was used in contravention of the act or regulations. Enforcement officers can also direct a ship to move to any place in Canadian waters or detain a ship if they have reasonable grounds to believe that the ship or a person on board the ship has committed or is about to commit an offence under the act.

[*English*]

As for fines and penalties, the details of liability and recovery of reasonable costs and expenses by Her Majesty are spelled out, noting that:

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

Offences and punishments are likewise laid out. On indictment, in the case of an individual, a first offence carries a fine of not less than \$15,000 and not more than \$1 million, and for a second or subsequent offence, the fine is not less than \$30,000 and not more than \$2 million. For a corporation, the first offence fine is not less than \$500,000 and not more than \$6 million, and for a second or subsequent offence, it's not less than \$1 million and not more than \$12 million.

Fines for ships are dependent on the size of the ship — those less than or more than 7,500 tonnes.

Funds received as a result of fines, court orders and voluntary payments will be directed to projects that benefit the natural environment. Some may indeed be directed to support an educational institution, including scholarships for students enrolled in studies related to the environment.

The act therefore underlines Canada's commitment as a responsible steward of our ocean resources for future generations. We are blessed to have an abundance of fresh water and marine coastal areas that are ecologically diverse and economically significant.

Thus, Bill C-55 proposes amendments to provide interim protection from new and emerging activities for biologically rich areas of Canada by ministerial order during the five years it will take for scientific analysis and consultations with partners. Only then will the MPA be fully established. While an interim protection MPA is in place, only existing activities will be allowed to continue. Therefore, the footprint will be frozen to reduce continued degradation by further activities.

No longer will the absence of scientific certainty be used to postpone decisions where there is a risk of serious or irreversible harm.

The consultative process adheres to the three foundational principles used to guide the ministry's marine conservation work: science-based decision-making, transparency and advancing reconciliation with Indigenous peoples. Therefore, peer-reviewed science, the traditional knowledge of Indigenous peoples, and information shared by the fishing industry and local communities are all cornerstones.

As the ministry has committed:

By balancing the collection of information and consultations with our partners with the precautionary approach, interim protection marine protected areas will offer the needed protections to our important ocean seascape and resources, while still being shaped by science and consultation.

The calls for stronger conservation standards were heard during the hearings at the other place, and these provisions have been included to ensure meaningful protections.

Further, the minister has announced that a national advisory panel will be established to provide advice for the future, while ensuring consideration of Indigenous world views and approaches with respect to marine conservation. The evolving concept of Indigenous protected and conserved areas is coupled with international best practices, advice from experts and balancing the recognition of regional difference.

During the committee work in the other place, they held nine meetings, received 13 briefs and heard 36 witnesses, and amendments were made to the bill in response to some of the issues raised. The issue of economic fairness was brought up by a few Indigenous groups and fishers. Concerns were expressed that these new powers might deprive rights holders and others of their dependence on marine resources for sustenance and livelihood. The minister emphasized that these amendments are not intended to close those important doors to economic activity but rather to ensure long-term viability and a sustainable economy.

Open conversations for co-management with Indigenous partners, including Inuit communities, have already been agreed to.

Colleagues, I look forward to the discussions at second reading, at committee and at third reading of this bill. Our Senate committee studying this bill should assess whether the appropriate and effective balance has been struck between the protection of designated areas and the economic activity.

I support the government's commitment to protecting our oceans and their important economic resources and to advancing reconciliation and moving towards a nation-to-nation dialogue. These ecosystems are fragile. Our oceans are large, equal to 70 per cent of Canada's land mass. Undertaking our stewardship responsibility is paramount, both for the present and for the future, and for all Canadians, especially Canada's coastal communities, whose economic livelihood is dependent on maintaining healthy, sustainable ecosystems.

I hope positive support will be given to Bill C-55.
