SENATE SÉNAT

CANADA

DEBATES OF THE SENATE

1st SESSION • 42nd PARLIAMENT • VOLUME 150 • NUMBER 280

OCEANS ACT
CANADA PETROLEUM RESOURCES ACT

BILL TO AMEND—THIRD READING—DEBATE ADJOURNED

Speech by:

The Honourable Patricia Bovey

Thursday, April 11, 2019

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Hon. Patricia Bovey: Honourable senators, I am pleased to stand here today to speak at third reading of Bill C-55, An Act to amend the Oceans Act and the Canada Petroleum Resources Act.

First, I want to applaud the serious and thorough work of the Standing Senate Committee on Fisheries and Oceans. Their study was comprehensive. They heard from multiple perspectives from coast to coast to coast. The passion for the areas, ocean beds, aquatic species, peoples of the areas, and the present and the future were all central to our discussions.

The chair, Senator Manning, managed the discussions with expertise. Everyone had their say, and were given time to pose questions and delve deep. The respect for various view points was palpable in the most positive sense. It was an honour to sponsor this bill and work with this committee.

Senator Manning and committee members, I thank you. Congratulations on the heartfelt deliberations.

At the outset, I also want to thank senators' staff. They worked hard in seeking out additional information throughout second reading and committee study. Their work added to the substance of the discussions, and as sponsor, I thank them all.

The department staff is also owed real thanks. They were there throughout, answering myriad questions — ones they wanted and perhaps those they did not want — ones they expected and those from left field.

Now I will speak to the bill itself. Let me remind you of its intent and what it was never meant to cover. The goal is marine protection, environmental and sea life, rare and endangered species, and endangered areas. It is not a land bill. It is not an overall oceans bill, which is Bill C-68, now under study by the Fisheries Committee.

This bill, Bill C-55, would simply provide an additional tool to use to protect the oceans that surround this country from coast to coast to coast, north, east and west. Canada's oceans are part of who we are. They have sustained the people who have inhabited this place throughout histories, pre- and post-contact. As the beneficiaries of this ongoing multi-century sustenance, we have a duty to provide the stewardship for which our oceans are now in dire need. It is this relationship — past, present and future — that led me to take on the sponsorship of this bill.

As one who has lived on one ocean and visited the other two many times, and whose father-in-law spent his whole working life on the Pacific Ocean, I felt a real need to speak to this particular piece of legislation. We live in a time of urgency when it comes to our oceans and the greater environment around us. We need to act now, because at the end of the day, it is the health of our oceans that ensures the health and prosperity of the people and communities that depend upon them.

Indeed, I find myself in a unique place at this moment. Here I am, an independent senator, sponsoring a bill of the Liberal government, based on and honouring a Conservative government's international agreement. Is anything more independent or comprehensive than that?

This bill, which was sent to us in June 2017 from the other place, as you know, recently completed committee stage with what I would characterize as an energetic, robust and honest debate. With the guidance of the chair — as I have said, Senator Manning — we spent a total of eight meetings on this bill. Three of those meetings were spent on clause by clause, where we discussed a total of seven amendments. This is on par with a number of committee meetings where this bill was under study in the house, which saw witnesses over a period that spanned nine meetings.

In total, witnesses from every coast and in between have spoken to the merits of this bill, a bill that seeks to provide a mechanism for interim protection for Marine Protected Areas, MPAs; to ensure we can protect and conserve areas of ecological significance until a final determination is agreed to among the various levels of government, communities and Indigenous peoples at the table.

Consultation is at the cornerstone of the establishment of a Marine Protected Area. It is clear that consultation remains the foundation of all decisions regarding proposed protection, including the process of providing interim protection under this bill, which allows time for research and solid ultimate decisions based on that consultation.

Again, as I said when I spoke to this bill in May, the establishment of a Marine Protected Area currently takes an average of seven to 10 years. In that period of determining the protected area, there is no mechanism currently in place or available in the Oceans Act to ensure we can begin to protect the potential areas of interest right from the start of the process.

This bill, based on the precautionary approach, will allow for interim protection areas that we know have ecological and biological significance, while further scientific research and Indigenous knowledge can be determined.

Bill C-55 will allow the minister to make an order to freeze the footprint of activities occurring in an area or cancel an interim designation. The interim order would be made following initial consultations and science after a period of approximately one and a half to two years. This means the total time for a final designation following the initial consultations would be six and a half to seven years, five of which are post the initial protection period.

Again, we know that the current average time to establish an MPA is five to seven years. As you can see, with this bill, there will be no shortcuts.

What is different, however, will be government's ability to ensure that, in the years leading up to the possible final designation, the area of interest receives a base level of protection. I would suggest to senators in this chamber that this is a common-sense piece of legislation when it comes to the stewardship of our marine environment.

Marine Protected Areas have helped us ensure that countless ecologically significant areas have received protection. These areas contribute immensely to support a network of marine biodiversity and the overall health of our oceans, so that many of us enjoy it for its splendour and, for many coastal communities, their livelihood.

Today, MPAs are protecting ecological systems in peril. These are areas that are important fish-breeding grounds that ensure our fisheries remain sustainable. There is no question that we need to do more to protect our marine environments if we are to provide critically important support for future fish stocks and the livelihood for future generations.

The protection of more areas is important and one agreed to by nations globally.

The Hecate Strait MPA, for instance, on the West Coast of British Columbia and the Douglas Channel in Queen Charlotte Sound is one such area. The Hecate Strait MPA conserves glass sponge reefs that cover a total area of 2,410 square kilometres. Made of silica, these sponges are fragile and live up to 200 years — more ancient, I may say, than all of us. The reefs are important, as not only do they filter the water, they provide refuge, habitat and nursery grounds for aquatic species, including commercially important rockfish, other finfish and shellfish species.

Could you imagine that for years while we sought to designate the area as an MPA, knowing how fragile these reefs were and are, but we could do nothing to protect them in the interim? To me, that seems to be a solvable problem. The answer lies in Bill C-55. I know many senators in this chamber share this sentiment with me.

[*Translation*]

There is no doubt that climate change is the biggest problem we are facing today. Measures to protect the environment and marine stewardship initiatives should have already been undertaken. As we learned in *Canada's Changing Climate Report*, which was published last week, Canada's temperature is rising.

Indeed, the temperature in the North has increased by 3.9 degrees, or three times the global average, which is 1.2 degrees. This temperature increase will cause sea levels to rise and increase the acidity and water temperature of the Arctic Ocean and all of Canada's oceans. The report predicts a dangerous acceleration of certain extreme weather events over a period of less than 100 years. Accordingly, the time we have to react to the situation corresponds to the lifetime of our grandchildren. We simply cannot wait another 15 years before we do something to protect our marine ecosystems, because our world is changing much faster than that — which was also predicted — and ecosystems need better protections much sooner. The cart is now before the horse. We need mechanisms like the interim protections set out in Bill C-55 to help make up for lost time.

I want to reiterate once again that making up for lost time does not mean cutting corners. We still need to conduct extensive consultations, which we will do, and the proposed legislation does not in any way change that process.

[*English*]

I would also say that this bill may be one of the very few that we see coming from the House of Commons that is based on a shared commitment by all parties. As many of you know, this bill will help the government meet its international marine conservation target of protecting 10 per cent of Canada's marine and coastal areas by 2020.

I would like to remind senators today that this commitment to fulfilling international targets for marine protection was actually first made by the previous Conservative government in 2010, and today, nine years later, we in this chamber are ensuring that we follow through with this well-defined commitment. Therefore, this bill, like our oceans that know no boundaries, transcends partisan lines. Let us work together to continue the promise of the previous government. We knew that we needed to protect the ocean then, and we know that even more today.

[*Translation*]

I now want to move on to the amendments made by the Senate Fisheries Committee. I think these amendments are redundant and change the purpose of the legislation.

It is clear from the comments of Senators McInnis and Patterson, the sponsors of the proposed amendments, that the amendments were made out of concern for their community. I commend them for doing that. Part of our work as senators is to represent our regions, and I know that that sentiment was at the heart of what motivated the senators to propose these amendments.

[*English*]

First, let me speak to Senator McInnis' amendment. It articulates that before an interim order is made, the approximate geographical location of the proposed area for interim protection and an assessment of what would be protected is to be made available. This is common sense. Government should be making that information available. If an interim protection order is made, knowing the general area is necessary in order to make the designation. That process and those definitions already exist.

In my view, and with all due respect, I believe Senator McInnis' amendment is, in short, redundant, as it seeks to make a change when the requirement is already in place.

Let me give you an example of the current gazetting requirement an interim protection order must adhere to.

If one goes online right now, one could look at any previously proposed order for a Marine Protected Area. I will use as an example the Banc-des-Américains Marine Protected Area proposed regulations published in *Canada Gazette*, Part I, on June 30, 2018.

The posting includes background information regarding the ecological significance of the area and its species, as well as an analysis of the impact of types of activities on the area, such as fishing, marine transportation, and tourism. In addition, there is a map of the proposed area — and many of you know I adore

maps — where the geographical location of the MPA is clearly identified, along with an analysis of benefits and costs of the proposed regulations and a description of the consultations.

We can see from the consultations that the process of selecting Banc-des-Américains for potential designation dates back to 2009. It was only after two years, in 2011, that the area of interest was officially announced. Again, I note that the proposed regulations for the final MPA were published in 2018.

In the two years before the area of interest was announced, there were extensive consultations regarding the boundary of the proposed protected area.

For those of you here who are not familiar with the gazette process, regulations are published in *Canada Gazette* Part I for an initial period of 30 days to allow for comments and suggestions from the public. This means that in the interim protection process, the order would need to be published in the Gazette for a minimum of 30 days. The published order would necessarily include the geographical location of the proposed area.

After the 30 days, the comments are assessed and a final set of regulations published in *Canada Gazette*, Part II. Once they are published in *Canada Gazette*, Part II, then the order is final and the area officially receives interim protection under the Oceans Act.

I also want to emphasize that this process is in addition to the cabinet directive of regulations that must be adhered to, and departments and agencies must ensure that the process is open and transparent when it comes to determining an area for interim protection. This cabinet directive is derived from the statutory authority under section 7(1) of the Financial Administration Act.

We can also see this directive, open and transparent, in action as to how current MPAs are determined. For instance, you can also go online today to see areas of interest for the proposed MPAs such as the Eastern Shore MPA. I want to be clear that this area in question has not yet been established. That is because the process typically takes anywhere from seven to ten years. Online, you will again find an actual map of the geographical location of the proposed Eastern Shore Islands Area of Interest and a description of the location:

> The site stretches from Clam Bay near Jeddore Harbour to Barren Island near Liscomb Point and extends approximately 25 km from mainland in the Scotian Shelf bioregion.

It lists the approximate size as 2,000 square kilometres. There is also a list of ecological features in the area, including important habitat for Atlantic salmon; complex mosaic at the bottom habitat; spawning area for Atlantic herring; juvenile/nursery area for Atlantic cod, white hake, and pollock; important foraging area for various birds, including Harlequin duck — which is of special concern — Roseate tern — which is endangered — and shorebirds such as the purple sandpiper.

As well, the key objectives of the approach are listed, as well as a list of the consultations that took place. All of this information is available now regarding an area of interest. It is available because this information is required under the cabinet directive on regulations.

Honourable senators, I have given you examples of how the amendment proposed by Senator McInnis is redundant and unnecessary. I also want to say I agree that consultation and knowing the area in question is critically important. I therefore agree with Senator McInnis' goals regarding openness and transparency for the communities.

Though I will agree with sending the amended bill back to the House of Commons, I do not think this amendment is necessary; it is already covered.

[*Translation*]

I know that Senator McInnis proposed this amendment because of the concerns he raised about the proposed MPA on the East Coast. I would remind you that this area hasn't been established yet. It is not an MPA yet. Fishing is not limited there. I understand that the communities are expressing their concerns. That is why there are consultations under way. Disagreements and concerns are part of the process, but make no mistake: it is not true that no one is being consulted or that there are no mechanisms in place yet to ensure transparency.

The second amendment I want to talk about is actually the first one the committee adopted on this bill, the one proposed by Senator Patterson. He explained why it was important to codify the current practices and conduct appropriate consultations. The concerns Senator Patterson talked about were raised by the Inuvialuit Regional Corporation and the Government of Nunavut.

[*English*]

Before diving into this amendment, however, I believe it's important to speak to the amendment made in the House of Commons Fisheries Committee by Members of Parliament Michael McLeod and Hunter Tootoo, at the request of Nunavut Tunngavik Incorporated, to ensure promises made under the Nunavut Agreement are carried out. Groups such as the Qikiqtani Inuit Association, or QIA, supported this change and, in a letter that the Fisheries Committee received a few weeks ago, said that they ". . . are satisfied that it protects Inuit rights."

I would also like to echo the words of Minister LeBlanc who addressed this issue in the other place. He said:

> Bill C-55 does not take away from the requirement to consult and engage throughout the development of an interim protection MPA. Part II of the Oceans Act, which frames the strategy for managing oceans, is based on a collaborative approach with provinces and territories, indigenous organizations, and stakeholders who depend on the oceans. The Oceans Act is one of the first federal statutes to enshrine a non-derogation clause.

Back to the substance of the amendment. As with Senator McInnis' amendment, I also put to you that this amendment is redundant, as it replaces a process that is already in place and is, therefore, in my estimation, unnecessary. Again, the Oceans Act

contains provisions that explicitly lay out the requirements for consultations in sections 29 to 33. Specifically, section 33 says:

> 33 (1) In exercising the powers and performing the duties and functions assigned to the Minister by this Act, the Minister
>
> (a) shall cooperate with other ministers, boards and agencies of the Government of Canada, with provincial and territorial governments and with affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements;
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> (b) may enter into agreements with any person or body or with another minister, board or agency of the Government of Canada;
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> (c) shall gather, compile, analyse, coordinate and disseminate information;
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> (d) may make grants and contributions on terms and conditions approved by the Treasury Board; and
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> (e) may make recoverable expenditures on behalf of and at the request of any other minister, board or agency of the Government of Canada or of a province or any person or body.

Again, even if somehow the government failed to cooperate or consult based on the explicit legal requirements in the Oceans Act itself, the interim protection order would need to go through the *Gazette* process and other processes required under the Statutory Instruments Act whereby anyone can submit their concerns and comments. This is obviously not the standard for consulting with communities and Indigenous peoples that we should deem as adequate. However, I am trying to illustrate to you that all of the mechanisms the amendment speaks to are already in place. I have to think the issue at the fore is due not to the present bill but to years of governments letting communities down with prior lack of consultative processes. I understand the concern and the desire to repair that concern.

Honourable senators, I also want to further touch on the discussion around this amendment regarding the inequality around existing land claim agreements. As many of you know, land claim agreements were signed at different points in time and, as a result, some have benefits that others do not. For instance, an Inuit impact benefit agreement, or IIBA, is required under the Nunavut Agreement and allows for the possibility of significant economic benefits to the region. The Inuvialuit Final Agreement, however, does not contain a similar provision that includes an IIBA. On this point, I think we all recognize that when it comes to ensuring that the rights of the Inuit are realized, it should be a race to the top.

I would like to read an excerpt from a letter recently received from the QIA, which represents over 14,000 Inuit peoples:

> QIA takes very seriously the need and utility of consultation. Equally important for QIA is clarity of process and engagement to allow for due diligence and decision making in a manner that supports the ability to apply Inuit rights. From QIA's perspective the proposed amendments to Bill C-55 will serve to frustrate the process of first considering and then coming to a decision upon interim protection. Prolonging this process does not result in improved benefits for Inuit.
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> Finally, what our engagements upon C-55 have demonstrated for QIA is the unfortunate implications of disparity between Inuit land claim agreements. Not all Inuit share the same rights as Inuit in Nunavut, yet all Inuit are actively seeking means to improve the socio-economic status of their communities. In the context of Federal conservation areas, delivery of improved benefits for Inuit requires a shift in policy, and possible amendments to existing land claims agreements, as opposed to legislative amendments to the Oceans Act. It is very unfortunate that differences among land claims agreements have created such inequity among Inuit. Simply stated the rights of some Inuit are stronger than others. From our perspective these inequities are unfair and will continue to result in difficulties in addressing social issues and developing local economies. This is a topic that deserves greater attention within the context of the Arctic Policy Framework. Where the high tide mark rises for one group, it should provide platform for others to do the same. Canada is made better when this occurs.

QIA, the Government of Nunavut, and the Government of Canada have been in negotiation for a considerable period over the potential creation of a protected area in the High Arctic Basin. This agreement would be a great development for QIA and Nunavut, and also another reason why Bill C-55 is so important.

If an interim order is issued depending, of course, on the passage of Bill C-55 without amendments, this would accelerate the process of creating an MPA for the area which, as I understand, has been under negotiation for years. Budget 2019 has set aside $700 million over 10 years for Arctic communities, and I understand that a significant portion of these funds is dependent on the designation of the High Arctic Basin. It would be better to get these funds out sooner than later, I think, and to help the Inuit in moving forward with a plan that they have been leaders on.

Honourable senators, I would also refer you to comments made by professor of law Nigel Bankes of the University of Calgary regarding the amendment proposed by Senator Patterson. Professor Bankes' post focuses on the intent of the bill, to reduce the time required to establish an MPA in an area deemed at risk. His conclusion regarding the amendment proposed by Senator Patterson reads thusly:

> The result of this amendment, if adopted, will be to create a stand-alone set of consultation provisions with respect to a single section and a single power within the statute. This is not a logical approach to address and improve the standard of consultation, nor an approach that will provide certainty with respect to consultation.

Indeed, Professor Bankes states:

> . . . it makes no sense to make an expedited process to provide a *temporary* MPA designation subject to *more* detailed statutory procedures than those that apply to a permanent designation by way of an order in council and regulation. Effective interim protection for marine areas at risk of harm requires speedy action: this amendment, if confirmed, will frustrate the very purpose of Bill C-55.

It is for these reasons that I did not support this amendment.

As the previous Minister of Fisheries, Oceans and the Canada Coast Guard put it:

> The interim protection MPA proposed under Bill C-55 addresses this gap in conserving our oceans' biodiversity. This new tool would give us the option to establish interim protection where initial science and consultation tell us we need to act in a precautionary manner. These MPAs provide a clearly defined geographical space that is recognized and managed through a new legal mechanism, a ministerial order, and are developed to achieve the long-term conservation of nature with associated ecosystem services and cultural values.

I believe that Bill C-55 strikes a balanced and responsible approach to providing protection for at-risk marine areas as originally received in this chamber. While I do not support the two amendments adopted at committee stage for the reasons I have stated, if it is the will of this chamber, I will agree to sending this bill back to the other place where these amendments will be considered and dealt with.