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## BRIEF ON BILL C-48

*(an Act respecting the regulation of vessels  
that transport crude oil to or from ports or marine installations  
located along British Columbia's north coast)*

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Submitted to the House of Commons Standing Committee  
on Transport, Infrastructure and Communities

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**SHIPPING FEDERATION OF CANADA**

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## **1. INTRODUCTION**

The Shipping Federation of Canada is the voice of the owners, operators and agents of the foreign flag ships that carry Canada's imports and exports to and from world markets. Our members represent over 200 shipping companies whose vessels make thousands of voyages between Canadian ports and international markets every year, carrying hundreds of millions of tonnes of cargo, ranging from containerized consumer and manufactured goods – to dry bulk commodities such as grain and coal – to liquid bulks such as crude oil and oil products.

We appreciate this opportunity to provide comments on Bill C-48, *an Act respecting the regulation of vessels that transport crude oil to or from ports or marine installations located along British Columbia's north coast*, which is currently before the Standing Committee on Transport, Infrastructure and Communities. As the committee is aware, Bill C-48 seeks to prohibit oil tankers that are carrying more than 12,500 metric tons of crude oil or persistent oil as cargo from stopping or unloading at ports or marine installations located along the northern coast of B.C., from the northern tip of Vancouver Island to the Alaska border.

## **2. RATIONALE FOR THE MORATORIUM**

Our association's mandate is to contribute to the policy discussion on the safe and efficient transportation of goods through Canadian waters. As such, our approach is to consider Bill C-48 through a transportation and safety lens, with a view to understanding the facts and evidence that led the government to conclude that a moratorium is the optimal means of managing the risks of transporting oil along B.C.'s north coast. Given the foregoing, we were interested to note that when the Minister of Transport was questioned on this very matter during his appearance before this committee, he said the following:

*The north coast, however, doesn't have all the infrastructure that the south coast does – or the east coast, or the St. Lawrence – and this is a particularly sensitive area. That is why we are putting the moratorium in place and overlaying on that the oceans protection plan . . . What's more, the area has fewer spill response systems in place than B.C.'s southern coast, where the port of Vancouver, the country's largest port is located.*

While it may be true that the infrastructure and spill response capacity that currently exist on B.C.'s north coast are not as robust as in other areas of Canada (which handle far greater volumes of tanker traffic), we fail to see how this precludes the possibility of deploying more capacity and implementing other risk mitigation measures in response to future traffic developments.

In this respect, it is worth noting that in 2012, Transport Canada conducted a safety review of the marine transportation components of the proposed Northern Gateway Project (under which diluted bitumen from the Athabasca oil sands would be exported to Asian markets via the Kitimat marine terminal on B.C.'s north coast), with a view to determining whether the project could be carried out within acceptable risk levels that were consistent with Canada's regulatory regime, safety standards and industry best practices.

The results of that study led Transport Canada to conclude the following:

*The review has not identified any regulatory issues or gaps or the need to consider any new regulatory requirements at this time (...) The existing international and Canadian marine laws and regulations, complemented by the enhanced safety measures the proponent is committed to implementing and monitoring will provide for safer shipping in support of the Northern Gateway Project (...) The proposed shipping routes are appropriate for the oil tankers that will be used at the proposed terminal (...) While there will always be residual risk in any project, after reviewing the proponent's studies and taking into account the proponent's commitments, no regulatory concerns have been identified for the vessels, vessel operations, the proposed routes, navigability, other waterway users and the marine terminal operations associated with vessels supporting the Northern Gateway Project. Commitments by the proponent will help ensure safety is maintained at a level beyond the regulatory requirements.<sup>1</sup>*

In other words, Transport Canada's own assessment indicated that the existing regulatory regime, combined with the implementation of enhanced safety measures, **could support the safe movement of oil through the northern coast of B.C.** From our side, we are not aware of any factual changes that have occurred since 2012 (or of any new risk assessment having been conducted) that would have led to a complete reversal of this position, or support an outright conclusion that the risks of transporting oil through the north cannot be mitigated by means other than a moratorium.

Considering the above, it remains unclear to us whether the proposed moratorium is really about the safety of transporting oil in Canadian waters, or whether it is actually about Canada's ability to engage in certain resource extraction activities (and the social acceptability related thereto).

### **3. THE EXISTING SAFETY RECORD**

We are also concerned that presenting the moratorium as a transportation safety initiative – without more informed evidence to demonstrate that the risks of transporting oil on B.C.'s north cannot be managed through other means – does a disservice to our industry and to the public by creating doubt about the effectiveness of the framework that governs shipping activity and marine safety in Canadian waters. As the committee is undoubtedly aware, that framework is based on the three pillars of preparedness, prevention and response, and provides a multi-layered approach to marine safety that combines international conventions and standards, domestic legislation and regulations, and industry measures and best practices.

Evidence of this framework's effectiveness can be found in the fact that over 100 million tonnes of oil and petroleum products (representing 94 percent of tanker movements in Canada overall) move safely in and out of ports on the east coast of Canada every year (mostly through Come-by-Chance, Port Hawkesbury, Saint John, Montreal and Quebec), as well as the fact that Canada has not experienced any spills over 1,000 tonnes in the last ten years, nor has it experienced a single major spill of crude oil during that period.

The framework's effectiveness is also acknowledged in the final report of the Tanker Safety Expert Panel, which was submitted to the Minister of Transport in the fall of 2013 after a lengthy study of the Canadian context:

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<sup>1</sup> Transport Canada - TERMPOL Review Process Report on the Enbridge Northern Gateway Project, 20/02/2012

*Due in large part to the strong ship-source pollution prevention measures in place . . . Canada has not suffered any significant oil spills since the implementation of the Regime. This includes a variety of regulated aspects of marine safety such as tanker safety, pilotage, and navigational aids, as well as voluntary industry practices, such as tanker vetting, exclusion zones, and escort tugs.<sup>2</sup>*

We certainly recognise that no industrial activity is free of risks and that the identification of acceptable risk levels is indeed a public policy decision. However, we believe that such assessments must be rooted in evidence. In this regard, we would note that several risk studies on marine spills in Canadian waters have been commissioned by various parties over the last few years, and to our knowledge, none contain conclusions that would support the need for an outright ban on tanker traffic in any specific location south of 60. In fact, the risk assessment study that most specifically addressed tanker traffic on the North Coast of B.C. – i.e., Transport Canada’s TERMPOL review mentioned earlier - did not identify any risks that could not be adequately managed.

#### **4. LEGAL ASPECTS**

In addition to the issues outlined above, we are also concerned that the implementation of the proposed moratorium may raise legal and diplomatic questions related to Canada’s ability under international law to deprive tankers of the right of innocent passage (and freedom of navigation) off the north coast of B.C. (including the Dixon Entrance and the Hectate Strait).

The government appears to have attempted to circumvent this possible conflict by crafting the moratorium as a prohibition on loading, unloading or anchoring at certain ports and marine installations – rather than a prohibition on the passage of tankers per se (thereby using the back door to accomplish what could not be done through the front door). Nevertheless, we believe that the approach still raises questions as to whether Bill C-48 violates the UNCLOS Convention’s prohibition against efforts by coastal states to enact laws and regulations or take other measures that “deny” or “impair” the freedom of navigation.

In this respect, we would note that international law allows coastal states to designate particularly sensitive areas, in which they can apply stricter measures (such as areas to be avoided or routing requirements) after having completed an informed risk assessment process under UNCLOS. It is our view the discussion on restricting the movement of tanker traffic along B.C.’s north coast should take place within the context of this international framework, which is where it properly belongs.

#### **5. REVIEW MECHANISMS**

We note that in its comments to this committee, Transport Canada indicated that it would be using an evidence-based, scientific approach when considering future additions or deletions to the list of persistent oils that appear in the schedule to Bill C-48. In this respect, we would note that although section 24 of the bill provides for the schedule to be amended by regulation, it does not require that the schedule be reviewed on a regular or periodic basis. We believe that the inclusion of such a requirement would strengthen the bill, and help ensure that ongoing efforts to add or delete substances from the schedule occur within the framework of a more formalized and transparent process.

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<sup>2</sup> Report from the Tanker Safety Expert Panel (“A review of Canada’s Ship-source Oil Spill Preparedness and Response Regime - Setting the Course for the Future”), submitted to TC on November 15, 2013 (page 8)

We would go even further with respect to the need for stronger review mechanisms within Bill Cc-48 by highly recommending that the bill provide for a periodic review of the need for the moratorium itself, which is particularly important in a context where the government plans to undertake a comprehensive review of response planning on B.C.'s north coast as one of its commitments under the Oceans Protection Plan. The inclusion of such a review mechanism would provide the government with an important tool for ensuring that the moratorium is based on an appropriate assessment of risks in response to evolving circumstances.

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We trust that that the committee will find these comments helpful in its deliberations and would be pleased to provide any additional information committee members may require.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M.H. Broad". The signature is written in a cursive style with a horizontal line at the end.

Michael H. Broad, President  
SHIPPING FEDERATION OF CANADA