

## WEST COAST ENVIRONMENTAL LAW ASSOCIATION

### Submission to the Standing Committee on Transport, Infrastructure and Communities Regarding Bill C-48, the *Oil Tanker Moratorium Act*

October 24, 2017 | Gavin Smith, Staff Counsel

#### I. INTRODUCTION

1. West Coast Environmental Law Association (“West Coast”) commends the federal government for introducing Bill C-48, the *Oil Tanker Moratorium Act*, and thanks the Committee for the opportunity to provide testimony regarding the Bill.
2. Once passed, Bill C-48 will reflect the voices of northerners, Indigenous peoples, local governments, labour groups, environmental organizations and many others that have called for B.C.’s unique north coast to be permanently protected from oil tankers.
3. West Coast has released a number of publications and opinions regarding a legislated Pacific north coast oil tanker ban, including most recently:
  - i. *Keeping Our Coast Clean: Frequently Asked Questions About an Oil Tanker Ban on BC’s Pacific North Coast* (January 2016);<sup>1</sup>
  - ii. *Will the Pacific North Coast Oil Tanker Ban Hold Water? A Review of Canada’s Proposed New Legislation* (January 2017);<sup>2</sup> and
  - iii. *Why the Oil Tanker Moratorium Act is Worth Celebrating* (May 2017).<sup>3</sup>
4. In the publications above, West Coast expresses its views regarding a range of issues related to Bill C-48. In the interest of providing a submission that will best assist the Committee in its review of Bill C-48, we focus our submissions in this brief on the following discrete issues:
  - i. A summary of the strong support for an oil tanker ban on B.C.’s north coast;
  - ii. Proposed amendments to add safeguards to the Bill’s oil tanker exemption provision;
  - iii. A proposal to facilitate appropriate public access to reporting and enforcement information under the Bill; and
  - iv. A recommendation that the Committee seek further information regarding the Bill’s 12,500 ton threshold, and consider whether a lower threshold is appropriate.

#### II. STRONG SUPPORT FOR BILL C-48

5. It is not an exaggeration to say that Bill C-48 has been almost a half-century in the making. The Honourable David Anderson, former Minister of Transport (as well as Minister in various other portfolios), has recounted his personal involvement in securing the federal government’s commitment in 1971 to a “ban on crude-oil-carrying tankers from the waters off Canada’s north-west coast” based on support “from residents of the coast, from First Nations and from Canadians across the country.”<sup>4</sup>

6. Similar public sentiments were noted in 1978 by Commissioner Andrew Thompson of the federal West Coast Oil Ports Inquiry:

Despite my familiarity with this history of determined opposition to tanker traffic, I have been surprised to find it so universal. In my preliminary meetings throughout the province and in the formal and community hearings of the Inquiry held to date, the oil port proposals have inspired few advocates other than the proponent companies themselves.<sup>5</sup>

7. While a voluntary tanker exclusion zone was created in 1985 to keep loaded oil tanker servicing the Trans-Alaska Pipeline System away from the coast of Haida Gwaii, no legislative mechanism was put in place to formalize an oil tanker ban on B.C.'s north coast. As a result, following the proposal of the Enbridge Northern Gateway pipelines and tankers project, no fewer than six Private Members' Bills have been proposed in the past decade to entrench a Pacific north coast oil tanker ban, and in 2010 a majority of Parliament passed a motion calling for the enactment of such a ban.<sup>6</sup>
8. There has been strong, widespread support for a legislated oil tanker ban on B.C.'s north coast in recent years, for example:
  - i. Coastal First Nations, "a unique alliance of nine distinct First Nations working together to protect our coast and improve the quality of life in our communities,"<sup>7</sup> declared a ban on crude oil tankers in their waters in 2010 with the *Coastal First Nations Declaration*, and they have recently called Bill C-48 "a big step in the right direction";<sup>8</sup>
  - ii. The Yinka Dene Alliance, consisting of six First Nations in north-central B.C., issued a joint statement with Coastal First Nations supporting the federal government in fulfilling its commitment to legislate a Pacific north coast oil tanker ban;<sup>9</sup>
  - iii. The Union of B.C. Indian Chiefs has publicly supported Bill C-48;<sup>10</sup>
  - iv. Local governments including the City of Prince Rupert, the Village of Queen Charlotte, the District of Kitimat, the City of Terrace, the Town of Smithers and the Skeena-Queen Charlotte Regional District have passed resolutions or sent letters opposing crude oil tanker traffic on B.C.'s north coast, and/or supporting the federal government's commitment to a formal Pacific north coast crude oil tanker ban;<sup>11</sup>
  - v. The Union of B.C. Municipalities has passed a resolution calling on the federal government to legislate an oil tanker ban on B.C.'s north coast;<sup>12</sup>
  - vi. Labour organizations including the United Fishermen and Allied Workers' Union – Unifor, the Canadian Union of Postal Workers, and the Prince Rupert District Teachers' Union have supported Bill C-48;<sup>13</sup> and
  - vii. Well over 30 community and environmental groups across B.C.'s north and throughout Canada have supported a legislated Pacific north coast oil tanker ban and applauded Bill C-48.<sup>14</sup>
9. West Coast echoes these voices of support for a legislated oil tanker ban on B.C.'s north coast, and commends the federal government for tabling Bill C-48.
10. In the remainder of this brief, we propose how Bill C-48 can be further strengthened.

### III. PROPOSED AMENDMENTS TO MINISTERIAL EXEMPTION PROVISION

11. In our view, the most concerning aspect of Bill C-48 is section 6, the Ministerial exemption provision. This broad power to exempt oil tankers from the Bill's prohibitions could in future be used to circumvent the Bill's very purpose, without any requirement that the public even be notified of such exemptions. We recommend amendments to section 6 that would allow flexibility for oil tanker exemptions where required in emergencies, while adding safeguards to ensure the exemption provision is not misused.

12. Section 6 of Bill C-48 (the "exemption provision") reads as follows:

#### **Ministerial exemption**

**6 (1)** The Minister may, by order, exempt an identified oil tanker from the application of any of subsections 4(1) to (3) on any terms and for any period that he or she considers appropriate, if he or she is of the opinion that the exemption is essential for the purpose of community or industry resupply or is otherwise in the public interest.

#### **Non-application of *Statutory Instruments Act***

**(2)** The *Statutory Instruments Act* does not apply to an order made under subsection (1).

13. The government's rationale for the exemption provision is to enable the Minister to exempt oil tankers from the Bill's prohibitions only when necessary in times of dire emergency. For example, on October 4, 2017, the Minister made the following statements in Parliament regarding the exemption provision:

Mr. Speaker, of course, we have said very specifically that the ministerial power would only be used in extreme emergencies for the public good and in cases where there was a dire emergency and a need to refuel a community along the northern coast of British Columbia. [...]

The ministerial powers are for extreme emergency situations. The only example that at the moment exists is if there was an emergency in a community along the coast in a remote area that suddenly, for reasons we do not anticipate, needed a vast quantity of a certain kind of fuel. That might be one exception. However, we do not anticipate using that ministerial power.<sup>15</sup>

14. The Minister's rationale is sensible and we support it. However, the exemption provision as currently drafted is much broader than the Minister describes. It does not have appropriate safeguards to ensure that oil tanker exemptions are ordered only in emergencies, and not for other purposes potentially contrary to the spirit of the Bill, nor does the exemption provision require that the public be properly informed of oil tanker exemption orders.

15. We submit that there are three issues of concern with the exemption provision:

- i. Ministerial authority to issue exemption orders is overly broad and not limited to emergency circumstances;
- ii. There are no time constraints on exemption orders; and
- iii. Legal requirements under the *Statutory Instruments Act* for public notice of, and access to, exemption orders are explicitly removed.

16. Below we address subsections 6(1) and 6(2) of the Bill in turn to outline the three issues of concern and recommend changes that would, in our opinion, add necessary safeguards. We conclude with proposed amended legislative wording for the exemption provision that reflects our recommendations.

### **Subsection 6(1): Issues of Concern**

17. We begin by noting that, in addition to subsection 6(1), Bill C-48 contains a number of other emergency exceptions, with which we take no issue, that would automatically ensure the Bill's relevant prohibitions do not apply to:
- i. Vessels under the direction or control of the Minister of National Defence;
  - ii. An oil tanker that moors or anchors at a port or marine installation to ensure the safety of the oil tanker;
  - iii. An oil tanker that moors or anchors at a port or marine installation to render assistance to a vessel in distress or if necessary after rendering such assistance; and
  - iv. An oil tanker that moors or anchors at a port or marine installation to obtain emergency medical assistance for any person on board.<sup>16</sup>
18. We agree with the inclusion of the above exceptions in the Bill, and we also support the government's stated rationale for the subsection 6(1) exemption provision, namely to provide the Minister with additional flexibility to ensure the provision of necessary supplies to community and industry during emergency circumstances.
19. The current exemption provision, however, endows the Minister with broad authority to issue oil tanker exemption orders for any reason that the Minister believes to be in the public interest or essential for industry and community resupply. The exemption provision is not limited to emergencies.
20. While Minister Garneau notes that he does not anticipate using this oil tanker exemption power except if necessary in dire emergencies, in future a Minister could use this broad power for other purposes, including purposes contrary to the spirit of the Bill.
21. This is particularly true considering that the exemption provision would allow the Minister to order oil tanker exemptions for any period of time without restriction, including very long-term or potentially indefinite exemptions.
22. For instance, say that in future an industrial project operating on BC's north coast sought to change or expand its operations such that it would require large tanker shipments of crude or persistent oil. Could a Minister issue oil tanker exemption orders to allow such shipments on the basis that, in the Minister's opinion, they were essential for industry resupply (or otherwise in the public interest)? This is arguably possible under the current exemption provision.
23. In a somewhat more heavy-handed example, suppose a future Minister supportive of crude oil tankers on BC's north coast sought to indefinitely exempt numerous specified oil tankers in an attempt to foster a climate more favourable to crude oil project proposals in the region. If, in the Minister's opinion, such oil tanker exemption orders were in the public interest, it is again arguable that the exemption provision could be used for this purpose (although West Coast and others would doubtlessly argue the contrary).

24. While the legally reasonable use of the exemption provision would ultimately depend on the specific facts, the hypothetical examples above illustrate that the exemption provision is so broad that it creates uncertainty, opening the door to future use of the exemption provision in circumstances other than emergencies, including in ways that would thwart the very purpose of the *Oil Tanker Moratorium Act*.
25. Bill C-48 is intended to entrench in legislation the commitment to a Pacific north coast oil tanker prohibition. In the words of Minister Garneau during the Committee hearings: “If you’re looking at putting a moratorium in place, it can’t be a partial moratorium, it has to be a complete moratorium.”<sup>17</sup> We agree. This purpose is significantly weakened by the exemption provision as currently drafted, because the Bill’s legislative prohibitions could be circumvented through use of the broad exemption power.

### **Subsection 6(1): Recommended Changes**

26. We recommend two amendments to subsection 6(1) to ensure that it enables the Minister to respond to dire emergencies, while otherwise limiting the scope of the exemption provision so that it cannot be misused for other purposes contrary to the spirit of the Bill:
  - i. Limit the use of the exemption power to emergency circumstances; and
  - ii. Impose a one-year expiry on exemption orders, with the ability to order additional one-year extensions as necessary.
27. The first amendment we recommend is to explicitly limit the use of the exemption provision to circumstances that, in the opinion of the Minister, constitute an emergency. This proposed amendment would still allow the exemption provision to fully accomplish its intended function. Minister Garneau has been clear that the exemption provision is solely and exclusively intended to be used in dire emergencies. The wording of the exemption provision should reflect that, in order to ensure that the provision is not used for other purposes.
28. Secondly, we recommend imposing an expiry period for oil tanker exemption orders, with Ministerial authority to order additional extensions as necessary. We propose an expiry period of one year for oil tanker exemption orders and orders to extend them, or a shorter period specified in the order itself. However, we note that there is no magic in the number of one year: a different expiry period could be imposed, provided that it is relatively short-term.
29. Setting a default term for oil tanker exemption orders would greatly curtail potential use of the exemption provision for long-term objectives incompatible with the Bill’s purpose, while also reflecting the reality that, in general, emergencies are not likely to require long-term oil tanker exemptions. At the same time, the ability to order further time-limited extensions would provide the Minister with flexibility to maintain emergency oil tanker exemptions for longer periods of time where required.
30. We submit that amending subsection 6(1) to clarify that it is to be used in a time-limited fashion, during emergency circumstances, would provide ample flexibility for the Minister to make oil tanker exemptions when necessary during emergencies, while significantly reducing uncertainty regarding whether the exemption provision could be misused for other purposes contrary to the spirit of the Bill. At pages 6-7 of this brief, we propose legislative wording to this effect.

### Subsection 6(2): Issues of Concern

31. Subsection 6(2) states that the *Statutory Instruments Act* (“SIA”) does not apply to orders made under the exemption provision. The apparent rationale is to enable the Minister to act quickly in emergency circumstances, without being bound by procedural requirements of the SIA.
32. However, the indirect effect of subsection 6(2) is to make orders under the exemption provision less public. In general (with some exceptions not relevant here), statutory instruments under the SIA and its regulations must be published in the *Canada Gazette* and registered by the Clerk of the Privy Council. Moreover, the SIA gives any person the right to inspect and make copies of a statutory instrument.<sup>18</sup> These public notice and access provisions would not apply to an order under the exemption provision of Bill C-48, because the SIA would not apply.
33. When the lack of public notice and access requirements as a result of subsection 6(2) is combined with the overly broad scope of the exemption authority in subsection 6(1), the exemption provision could, if used to its full extent, allow wide-scale and long-term exemptions from the oil tanker prohibitions to be ordered behind closed doors without opportunity for public review, effectively gutting the purpose of the *Oil Tanker Moratorium Act*.

### Subsection 6(2): Recommended Changes

34. We recommend a simple amendment to subsection 6(2) to ensure that the exemption provision requires adequate public notice of, and access to, oil tanker exemption orders: state that an oil tanker exemption order must be published in the *Canada Gazette*.
35. Under this recommended approach, subsection 6(2) would still state that the SIA does not apply to oil tanker exemption orders, thus ensuring that such orders can enter into effect quickly and with a minimum of procedural requirements during an emergency. However, requiring publication of the orders in the *Canada Gazette* would ensure that the public would be provided with proper notice of, and access to, the oil tanker exemption orders.
36. There is precedent for our recommended approach. Recent federal statutes provide for Cabinet exemption orders to which the SIA does not apply, yet state that the exemption orders must be published in the *Canada Gazette*.<sup>19</sup> We recommend an amendment adopting similar language, as illustrated below.

### Proposed Amended Language for Ministerial Exemption Provision

37. In summary, we recommend three changes to the exemption provision in Bill C-48: limit the use of the exemption power to emergency circumstances; impose a one-year expiry on oil tanker exemption orders, with the ability to order additional one-year extensions as necessary; and require that oil tanker exemption orders be published in the *Canada Gazette*.
38. We propose the following amended language for the exemption provision, to reflect our recommended changes:

#### **Ministerial exemption**

**6 (1)** The Minister may, by order, exempt an identified oil tanker from the application of any of subsections 4(1) to (3) on any terms that he or she considers appropriate, if he or she is of the opinion that the exemption is essential for the purpose of community or industry resupply, or is otherwise in the public interest, as a result of emergency circumstances.<sup>20</sup>

### **Expiry and renewal of order**

**(2)** An order made under subsection (1) expires one year after the day on which it is made or renewed, or on an earlier date specified in the order, unless the Minister, by order under subsection (1), renews it.<sup>21</sup>

### **Non-application of *Statutory Instruments Act***

**(3)** The *Statutory Instruments Act* does not apply to an order made under subsection (1). However, the order must be published in the Canada Gazette.

## **IV. PUBLIC ACCESS TO REPORTING AND ENFORCEMENT INFORMATION**

39. We agree with the Prime Minister's direction in the Mandate Letter for Minister Garneau that "Government and its information should be open by default."<sup>22</sup> We submit that this direction ought to apply to the welcome reporting and enforcement provisions in Bill C-48. To this end, we propose that Cabinet be empowered to enact regulations providing for appropriate public disclosure of reporting and enforcement information under the Bill.
40. We commend Transport Canada for publicly releasing its commissioned study, *Community and Industry Resupply of Oil on the North Coast of British Columbia* (the "Supply Study"),<sup>23</sup> which was invaluable in preparing submissions to this Committee. Besides the Supply Study, there is troublingly little in the way of reliable public information regarding marine shipments of oil products on B.C.'s north coast (in fact the Supply Study itself repeatedly notes the lack of comprehensive information). Bill C-48 presents an opportunity to improve that situation by enabling proactive public disclosure of reporting information required by the Bill.
41. Section 7 of Bill C-48 requires pre-arrival reporting by vessels capable of carrying more than the prohibited threshold of oil products, including reporting of identifying information, intended destination in the region, type and amount of any oil the vessel is carrying, and type and amount of oil intended to be loaded or unloaded.
42. Section 7 is welcome because it will improve Transport Canada's access to information regarding oil shipments in the region. However, this information is not only important for the federal government in monitoring compliance with the Bill; it is also relevant and significant for those who live on the coast, and for other members of the public. Consequently, we recommend providing for appropriate, proactive public disclosure of reporting information under section 7.
43. The Bill provides for a number of other administration and enforcement tools, such as a direction not to moor or anchor (section 8), a direction to provide information (section 10), an order to detain a vessel (section 17), and an application for a court order to sell a detained vessel (sections 20-23). The Bill also establishes offences under sections 25-26 for contravening various provisions of the Bill.
44. Numerous federal statutes pertaining to environmental issues provide for public disclosure of convictions and, in some cases, other information respecting administration and enforcement of the legislation, for the purposes of facilitating public access to information and encouraging compliance with the law.<sup>24</sup> Accordingly, we also recommend that Bill C-48 enable appropriate public disclosure of convictions and information regarding administrative and enforcement actions under the Bill, where not already required under the *SIA*.

45. Such public disclosure would need to comply with federal legislation such as the *Access to Information Act* and the *Privacy Act*, and may raise questions regarding the appropriate treatment of potentially sensitive commercial information. Consequently, Bill C-48 could empower Cabinet to make regulations regarding the appropriate proactive disclosure of reporting and enforcement information, in order to allow appropriate time to consider and address such issues.
46. Below is a proposed amended version of the section 24 regulation-making powers in Bill C-48, which would add a provision enabling the creation of regulations for appropriate public disclosure of information related to reporting and enforcement:

**Regulations**

**24 (1)** The Governor in Council may make regulations for the purpose of facilitating public access to information or documents relating to matters under this Act.

**Amendments to Schedule**

**(2)** The Governor in Council may, by regulation, amend the schedule by adding or deleting any oil or class of oils.

## V. CONSIDERING A LOWER TONNAGE THRESHOLD

47. West Coast has taken the position in previous materials that the Bill's prohibitions ought to apply to the largest bulk shipments of oil products in tank barges currently plying the moratorium region, such as the DBL-55 barge pushed by the now-sunken Nathan E. Stewart. Bill C-48, as drafted, would not apply to such tank barges for several reasons: they generally do not call at ports or marine installations in the moratorium zone; in most cases their cargo does not classify as crude or persistent oil subject to the Bill's prohibitions; and their cargo capacity falls below the 12,500 ton threshold.
48. While West Coast continues to support the position above, in this section we make an alternative submission.
49. Even if Bill C-48 maintains its current approach, and consequently does not affect the large bulk petroleum tank barges that currently transit the moratorium zone to or from Alaska, we recommend that in any event the Committee seek further information from Transport Canada regarding the rationale for the 12,500 ton threshold for the Bill's prohibitions, and consider whether the threshold ought to be lowered.
50. The Supply Study provides very useful information regarding shipments of oil products in the moratorium zone, including the following:
- i. Fuel barges for resupply on B.C.'s north coast have a cargo capacity ranging from 1,600 to 3,200 tons;
  - ii. Fuel barges in transit to or from Alaska have a cargo capacity ranging from 6,400 to 8,000 tons;
  - iii. In 2015, six tankers reporting "hazardous cargo" or, in one case, "coal tar," called on Prince Rupert or Kitimat (none entered Stewart Harbour), with deadweight tonnage (a measure of the maximum capacity for cargo and all other supplies) ranging from 15,002 to 36,634 tons, however the exact nature and quantity of products loaded or unloaded is not clear;



- iv. Such tankers on BC's north coast "are typically used to ship specific industrial products from international origins, rather than used for remote community and industry resupply";<sup>25</sup>
  - v. In 2011, the most recent year with data available, Prince Rupert and Kitimat received total international petroleum shipments of 8,680 tons and 59,070 tons, respectively, consisting mainly of slack wax shipments in Prince Rupert and shipments in Kitimat of liquid pitch (coal tar) and potentially diluents.
51. Based on the above information, it is clear that remote community and industry resupply on B.C.'s north coast does not require single shipments larger than 3,200 tons. The Supply Study does not indicate why a threshold of nearly four times that amount, namely 12,500 tons, is appropriate. The figure of 12,500 tons is not mentioned in the Supply Study.
52. One possible reason for the 12,500 ton threshold is to allow flexibility for tanker shipments such as the 2015 shipments listed in the Supply Study. However, the Supply Study is generally inconclusive as to the exact nature and quantity of the "hazardous cargo" carried by the tankers (for which only one year of data is provided), and it does not shed light on the relationship, if any, between such shipments and the rationale for the 12,500 ton threshold, which in the words of Transport Canada is intended "to ensure north coast communities and industries can receive critical shipments of heating oils and other petroleum products."<sup>26</sup>
53. We support the federal government's reasonable objective of ensuring north coast communities and industries continue to receive critical existing shipments of heating oils and other petroleum products. At the same time, however, we submit that the tonnage threshold for Bill C-48's prohibitions should be as low as possible, both to minimize the risks to the region inherent in marine oil shipments, and to ensure that the threshold is strict enough to deter proponents from introducing projects that would significantly increase marine shipments of crude or persistent oil in the moratorium zone.
54. It is clear from the Supply Study that a minimum threshold of 3,200 tons is appropriate to exclude existing coastal shipments from Bill C-48's prohibitions. In contrast, there is insufficient information to understand the rationale for the 12,500 ton threshold.
55. We recommend that the Committee seek a more detailed rationale from Transport Canada regarding the 12,500 ton threshold, including whether it is restrictive enough to prevent future large project proposals that would significantly increase marine shipments of crude or persistent oil in the moratorium zone. We further suggest that the Committee consider whether a lower threshold would be appropriate in light of any additional information provided by Transport Canada.

## VI. CONCLUSION

56. West Coast thanks the Committee for the opportunity to present our views. We look forward to seeing a strong *Oil Tanker Moratorium Act* passed into law.

## Endnotes

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<sup>1</sup> <https://www.wcel.org/sites/default/files/publications/KeepingOurCoastClean.pdf>.

<sup>2</sup> <https://www.wcel.org/sites/default/files/publications/2017-01-30-WillTheOilTankerBanHoldWater-WCEL-EvaluationOnProposedLegislation-FINAL.pdf>.

<sup>3</sup> <https://www.wcel.org/resources/environmental-law-alert/why-oil-tanker-moratorium-act-worth-celebrating>

<sup>4</sup> David Anderson, “David Anderson: Tanker-ban decision was not taken lightly” *The Times Colonist* (14 November 2015), online: <http://www.timescolonist.com/opinion/columnists/david-anderson-tanker-ban-decision-was-not-taken-lightly-1.2111348>.

<sup>5</sup> Commissioner Andrew R. Thompson, *West Coast Oil Ports Inquiry: Statement of Proceedings* (February 1978), online: <http://www.empr.gov.bc.ca/Mining/Geoscience/MapPlace/thematicmaps/OffshoreMapGallery/Documents/West-Coast-Oil-Port-Inquiry-Statement-of-Proceedings.pdf> at page 2.

<sup>6</sup> Bill C-571, *An Act to Amend the Canada Shipping Act, 2001*, 2nd Sess, 39th Parl, 2008; Bill C-458, *An Act to Amend the Canada Shipping Act, 2001*, 2nd Sess, 40th Parl, 2009; Bill C-606, *An Act to Amend the Canada Shipping Act, 2001*, 3rd Sess, 40th Parl, 2010; Bill C-211, *An Act to Amend the Canada Shipping Act, 2001*, 1st Sess, 41st Parl, 2011; Bill C-437, *An Act to Amend the Canada Shipping Act, 2001*, 1st Sess, 41st Parl, 2012; Bill C-628, *An Act to Amend the Canada Shipping Act, 2001 and the National Energy Board Act*, 2nd Sess, 41st Parl, 2014. House of Commons, Journals, 40th Parl, 3rd Sess, No 112 (7 December 2010) (Motion by Nathan Cullen).

<sup>7</sup> <http://coastalfirstnations.ca/our-communities/our-people/>.

<sup>8</sup> Coastal First Nations, “Coastal First Nations responds to oil tanker moratorium legislation announcement by Federal Government” (May 11, 2017). *Coastal First Nations Declaration* (2010), online: <https://www.wcel.org/sites/default/files/old/files/file-downloads/Coastal%20First%20Nations%20Tanker%20Ban%20Declaration.pdf>.

<sup>9</sup> Coastal First Nations and Yinka Dene Alliance, “BC First Nations Offer Support to Trudeau Government in Fulfilling Federal Commitment to Pacific North Coast Oil Tanker Moratorium” (16 December 2015), online: <http://www.marketwired.com/press-release/bc-first-nations-offer-support-trudeau-government-fulfilling-federal-commitment-pacific-2082547.htm>. The Yinka Dene Alliance also spearheaded the *Save the Fraser Declaration*, signed by representatives of well over 100 First Nations, including over 80 in B.C., which declares: “We will not allow the proposed Enbridge Northern Gateway Pipelines, or similar Tar Sands projects, to cross our lands, territories and watersheds, or the ocean migration routes of Fraser River salmon.” *Save the Fraser Declaration*, online: <https://savethefraser.ca/>.

<sup>10</sup> Union of BC Indian Chiefs (with multiple groups), “Letter Re: Support for Bill C-48” (October 3, 2017), online: <https://www.wcel.org/sites/default/files/publications/2017-10-03-billc-48-openletter-final.pdf> [“Bill C-48 Support Letter”].

<sup>11</sup> City of Prince Rupert (with multiple groups), Bill C-48 Support Letter, *ibid*; District of Kitimat, “Letter Re: Support for Bill C-48” (October 19, 2017); Village of Queen Charlotte, “Input on Extension to Enbridge Northern Gateway Permit” (June 15, 2016); City of Terrace, *Motion No. 51* (February 13, 2012); Town of Smithers, Untitled Letter Opposing Enbridge Extension Application (June 17, 2016); Skeena-Queen Charlotte Regional District, “Letter Re: Northern Gateway Pipelines Inc. – Condition 2 Compliance Filing” (June 24, 2016).

<sup>12</sup> Union of British Columbia Municipalities Resolution No. B-139 (September-October 2010); Union of British Columbia Municipalities Resolution No. A8 (September 2012).

<sup>13</sup> Bill C-48 Support Letter, *supra*.

<sup>14</sup> *Ibid*; “Letter Re: Commitment to introduce legislated ban on oil tanker traffic on British Columbia’s north coast” (November 13, 2015), online:

[https://www.wcel.org/sites/default/files/old/files/publications/201511\\_tanker\\_ban\\_open\\_letter.pdf](https://www.wcel.org/sites/default/files/old/files/publications/201511_tanker_ban_open_letter.pdf).

<sup>15</sup> *Hansard No. 212*, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl, October 4, 2017, online: <https://www.ourcommons.ca/DocumentViewer/en/42-1/house/sitting-212/hansard>

<sup>16</sup> Bill C-48, *Oil Tanker Moratorium Act*, 1<sup>st</sup> Sess, 42<sup>nd</sup> Parl, 2017, ss 3(2) and 5.

<sup>17</sup> Testimony of Minister Marc Garneau before the Standing Committee on Transport, Infrastructure and Communities, October 19, 2017, 16:16:20 EST.

<sup>18</sup> *Statutory Instruments Act*, RSC 1985, c S-22, ss 12, 17-18; *Statutory Instruments Regulation*, CRC, c 1509, ss 6, 11(1).

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<sup>19</sup> *Bridge to Strengthen Trade Act*, SC 2012, c 31, s 6(2); *New Bridge for the St. Lawrence Act*, SC 2014, c 20, s 11(2). There are other similar examples, see e.g. *Bank Act*, SC 1991, c 46, s 21(3); *Trust and Loan Companies Act*, SC 1991, c 45, s 20(3).

<sup>20</sup> We submit that it is not necessary to define “emergency circumstances” because, under our proposed wording, the Minister retains discretion for determining the existence of emergency circumstances. However, we note that definitions for emergency circumstances exist in federal legislation and could potentially be adapted and included, if desired, see e.g. *Reduction of Carbon Dioxide Emissions from Coal-Fired Generation of Electricity Regulations*, SOR/2012-167, s 7(2).

<sup>21</sup> This proposed addition reflects legislative language similar to *Species at Risk Act*, SC 2002, c 29, s 61(5).

<sup>22</sup> Office of the Prime Minister, “Minister of Transport Mandate Letter” (November 2015), online:

<https://pm.gc.ca/eng/minister-transport-mandate-letter>.

<sup>23</sup> Transport Canada, *Community and Industry Resupply of Oil on the North Coast of British Columbia* (October 2017), online: <https://www.tc.gc.ca/eng/marinesafety/community-industry-resupply-oil-north-coast-british-columbia.html> [“Supply Study”].

<sup>24</sup> See e.g. *Canadian Environmental Protection Act, 1999*, SC 1999, c 33, ss 12-13, 294.2; *Migratory Birds Convention Act, 1994*, SC 1994, c 22, s 18.21; *International Boundary Waters Treaty Act*, RSC 1985, c I-17, s 40; *Species at Risk Act*, SC 2002, c 29, ss 120-121; *International River Improvements Act*, RSC 1985, c I-20, s 50; *Canada National Marine Conservation Areas Act*, SC 2002, c 18, s 28.3; etc.

<sup>25</sup> Supply Study, *supra*.

<sup>26</sup> Transport Canada, *Oil Tanker Moratorium on British Columbia’s North Coast* (October 2017), online:

<https://www.tc.gc.ca/eng/marinesafety/oil-tanker-moratorium-british-columbia-north-coast.html>.