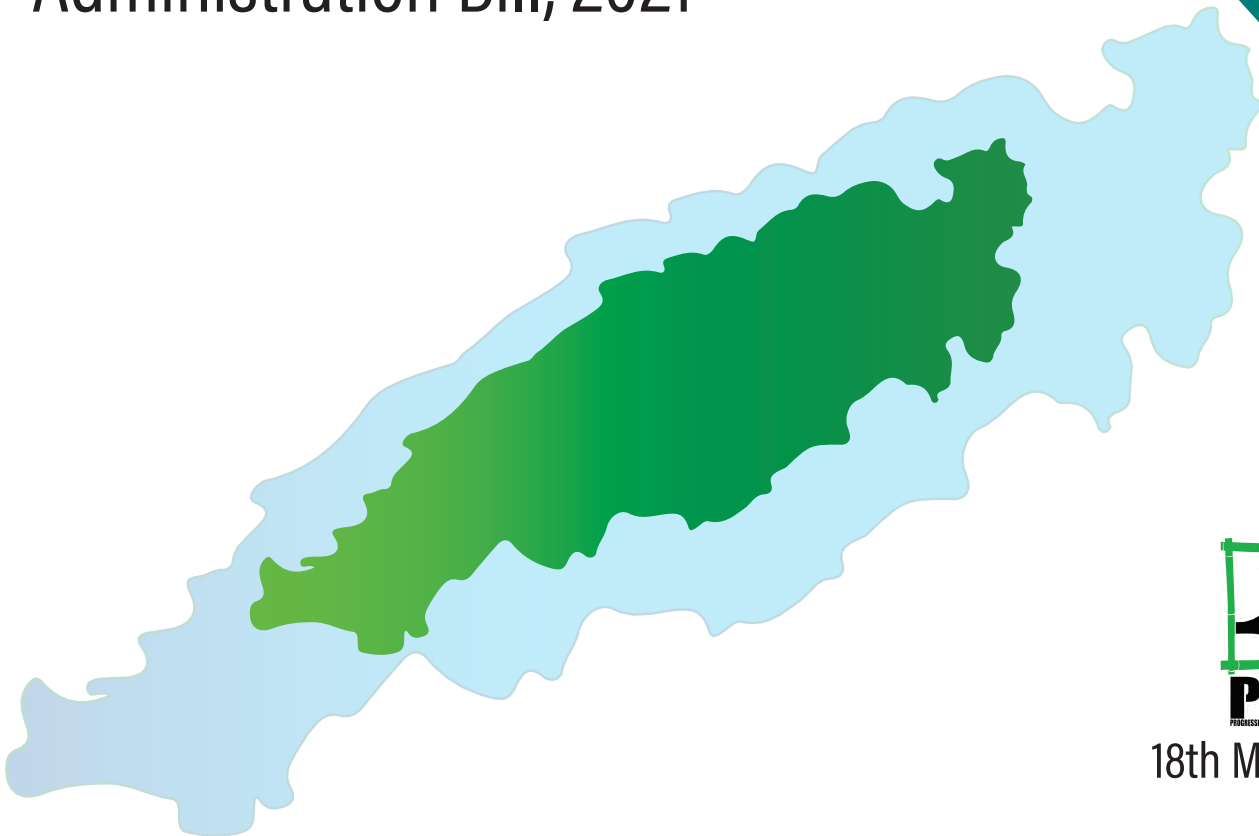


# A REFLECTION OF THE VIEWS OF THE PEOPLE OF TOBAGO



## Draft Constitution (Amendment) (Tobago Self-Government) Bill, 2020 and The Tobago Island Administration Bill, 2021



18th May, 2021

The following written submission is based on conversations, emails, notes and commentary shared with the Progressive Democratic Patriots as it conducted several conversations on the draft bills. These conversations started on Wednesday 05th May, 2021 with a large virtual consultation and then filtered into community conversations led by the elected representatives of the party.

Please share full document with all members of the Joint Select Committee.

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## **Introduction**

The draft Constitution (Amendment) (Tobago Self-Government) Bill, 2020 and The Tobago Island Administration Bill, 2021 DO NOT accord unto Tobago equality of status with Trinidad as is purported in the explanatory notes and the preamble to proposed bills. Contrarily, the draft bills provide few mechanisms that actually grant Tobagonians that long awaited autonomy; these drafts ignore most of the provisions recommended by Tobagonians after several years of consultations and that was compiled in a 2016 draft prepared by The Forum of Political Parties. It cleverly restricts the law making the powers that will be granted to Tobago while ignoring multiple international practices in the devolution of powers as found within and outside of the Commonwealth.

After several conversations with our constituents, we can affirm that Tobagonians are resolute that there are three main elements that must be present in any legislation that will grant Tobago its autonomy:

1. Clear definition of the physical boundaries of Trinidad and Tobago as a whole, then the island of Trinidad and the island of Tobago. This must be accompanied by reasonable jurisdiction of the Tobago Island Government over Tobago's marine space and a formula for sharing royalties from exploration of resources found in Tobago's marine space.

2. Tobago must have legislative authority over all the items located in the 5th Schedule of the current Act 40 of 1996, in addition to inclusion of some other pertinent areas.

3. Tobago must ultimately be granted the right to self determination, which is the right to select for itself a government of its own design and choosing.

The draft bills as presented represents such a significant deviation from what Tobagonians sent to the national parliament, that these drafts effectively nullified all consultations that were held in Tobago leading up to 2016. These new arrangements (as not proposed by Tobagonians) would

ideally require fresh and detailed rounds of consultations that has not happened or will not happen for one reason or the other.

Given all of the above, Tobago has respectfully rejected these draft bills as they fail in their intent to provide reasonable legislative autonomy for Tobago on one hand and to provide equality of status between the island of Trinidad and the island of Tobago.

## **Division of Powers**

Clauses 8, 11 and 13, the Fourth Schedule and the Fifth Schedule, establish the division of powers between the Tobago legislature, the Executive Council of the Tobago House of Assembly on one hand and the cabinet and national parliament on the other. Here are the serious issues that require addressing or change:

1. Under 8(c) The cabinet and or national parliament can circumvent the powers of the Tobago Island Government and or Executive Council “in relation to a state of public emergency”. What constitutes a public emergency? There must be an agreed criteria for this provision. It cannot be left to the sole discretion of a cabinet without specific guidelines for triggering this provision. Generally, in jurisdictions around the world, “public emergency” powers refers to governments’ powers to respond rapidly to a public emergency by: making regulations without an act of parliament, taking actions without complying with statutory duties that it would normally have to comply with, taking actions that it would not normally be allowed to take. Those powers can be set out in new primary legislation or, sometimes, in regulations made by ministers using existing primary legislation. Emergency powers often allow the government to introduce measures that may affect fundamental rights, such as the right to liberty. These measures can only be introduced in exceptional circumstances and should be temporary in nature. The general nature of emergency powers can lead to abuses and that must be avoided. Therefore we recommend the following list of possibilities that can trigger such emergency powers be built into the legislation:

- a) Upon the expressed request or invitation from the Tobago Island Government.
- b) Natural disasters that Tobago has demonstrated an inability to manage.
- c) A disease or disorder that presents a public health emergency. This includes significant outbreaks of infectious diseases or bioterrorist attacks (which appear unlikely at the

moment, but given the evolution of world politics, falls in the realm of possibility).

d) The Premier can petition the President for a declaration of major disaster or emergency.

## 2. The Fourth Schedule versus the Fifth Schedule

We STRONGLY recommend that the approach to the Fourth and Fifth Schedule be changed. Instead of creating a list of areas that Tobago will have legislative control over, we should create only a “CONCURRENT LIST”. This is the list of areas that grants the national parliament control and provides for concurrence and conversations between the Tobago Island Government and the national parliament. All areas not listed on this “CONCURRENT LIST”, will automatically fall under the purview of the Tobago Island Government. This approach will prevent grey areas from developing and will allow for a clearer mandate. The areas that should be featured on this concurrent list should include: boarder security/national security, without limitation on having internal security quite like what exists in Borough Corporations, International Relations (with a mandate for participation from Tobago on matters directly affecting Tobago or the use of its space and resources, Foreign Exchange and Exchange Control, Financial Intelligence, National Insurance, Banking without prejudice to Tobago having its own Development Bank, National Anti-Money Laundering and Counter Financing of Terrorism, Office of the Director of Public Prosecutions Office of the Solicitor General, Registrar General , Commissions of Enquiry Constitutional Matters and Protocols of the State among others to be carefully decided upon.

It must be noted that the proposed Fourth Schedule hardly deals with serious governance issues, e.g if Tourism is the economic driver of Tobago, relegating it to simply dealing with amenities is egregiously insulting. It deals with operational matters that by enumerating some will invariably exclude others that will require treatment by the Tobago Island Government.



Why not vehicular traffic? Why must that come from Trinidad? Currently, Act 40 of 1996 vested all State Lands in the authority of the Tobago House of Assembly, why this retrogression? And what becomes of lands purchased by the Tobago House of Assembly? Note: Infrastructure, including air and sea transportation, wharves and airports and public utilities; has been totally removed from either schedules. A critical observation that is relevant here is that the 5<sup>th</sup> Schedule leaves to Trinidad policy- and law-making responsibilities for key areas that are vital to Tobago's push for economic, social and institutional development, and for which it must be able to make policy and law, such as:

- a. Education
- b. Health
- c. Tourism
- d. Sports
- e. Planning and Development

## **The Structure of the Tobago Legislature (Clause 18)**

Chapter 11A of the Constitution is repealed and a new Chapter is substituted that spells out the general structure of the Tobago Legislature. This is a dangerous Act. This will mean that anytime there is a need for a change, then a constitutional change will have to happen and that will demand a special majority. Given our nation's history, constitutional changes are very difficult to come by. There is even a sinister move to have embedded in the constitution, provisions that will prohibit revenue generation from taxation and from borrowing for a long time.

According to Tobagonian Economist Dr. Vanus James (2021): "Self-determination and autonomy cannot mean amendments that places the governance arrangements for Tobago in the Constitution of Trinidad and Tobago – a Constitution that is not controlled by Tobago but by 39 Trinidadians. If Tobagonians ever want to upgrade their governance to facilitate their pursuit of freedom and development, they would have to go to Trinidad for permission to do so. That is the antithesis of equal status and self-determination – an expression of colonial subjugation and subordination" (The Constitution Amendment (Tobago Self-Government) Bill, 2021: Another Effort to Frustrate Tobago's Pursuit of Autonomy).

Further, Tobagonians never wanted appointed members in its governance design. The island wanted a bi-cameral system with both Houses having elected members. The notion of the 2<sup>nd</sup> Chamber was for a counterfoil for monitoring and oversight of the executive branch. It was intended to have interests independent of the parties in the primary election form this chamber. The unicameral system proposed merely mirrors what obtains at the primary election. This was always a contentious provision in terms of its formulation and method of selection. Appointments from the President does not satisfy the desire of Tobagonians for an independent system of monitoring the Executive.

Unelected members of a House of Representatives are anti-democratic and subvert the most fundamental principle of representative government – government of the people. Further, unelected

members have no obligation to consult with and hear the views of the people before making decisions on their behalf, which is a cornerstone of the principle of democratic government. Indeed, they have no constituents to consult with.

While the other appointments are undemocratic, the appointments by the President are especially egregious. The President is not an elected representative of the people of Tobago and has no relevant way to determine who can best speak for the people of Tobago. The President is selected by a government over which Tobagonians have no effective control. Such a constitutional creature has no legitimate business choosing anyone to represent or govern Tobagonians.

To understand Tobago's objection to a unicameral system with appointed members, one must first understand that Tobagonians never wanted a governance system that resembles or mirrors what happens at the national parliament or even Westminster for that matter. It is why there was a conscious decision to refer to Executive Council Members as Secretaries (resembling the Executive in the United States), to never use the term "Opposition" but "Minority", to not allow the calling of an election to be the sole prerogative of a Chief Secretary but rather the House dissolves itself on its anniversary in a fixed date manner or must happen by a resolution voted upon by all members of the House. Tobagonians have been purposeful in the kind of governing structure that it wants.

The only suitable alternative to the recommended People's House would have been to separate the Executive from the legislature, and to create a House of FULL-TIME Area Representatives, whose function it is to vet and approve appointments to the Executive from the Chief Secretary/Premier, pass legislation, hold committee hearings and to robustly hold to account the Executive.

By the way, Tobagoians had overwhelmingly rejected the title of Premier, yet it ended up in the draft bills produced by the Joint Select Committee.

Initially, in 2016, Tobago submitted the following: "141A. (1) There shall be a Tobago Legislature which shall consist of the President, the House of Assembly and a People's House the

composition of which People's House shall be determined by the House of Assembly." Perhaps what is needed are broad measures, the detailing of a list of rights and responsibilities and the allowance of the new THA to build out the structure it desires.

## **Participatory Democracy**

Embedded in the constitutional change should be the right of Tobagonians to participate in their government outside of voting. This, as opposed to some of the structural changes, should be enshrined. That way, it is not left up to the whims and fancy of the government of the day. A constitutional amendment must begin from the premise that the people own the country.

Accordingly, consistent with the UN's Sustainable Development Goals (SDGs), it must make provisions for the people to influence routinely the normal decisions made by the government they hire. From that premise, the most fundamental issue in the proposed Bill is an error of omission. It makes no provision for the right of the people of Tobago to petition and lobby (seek assistance of) their government, without fear of vindictive and repressive repercussions and reprisals by government. Other than voting to elect representatives every four years, the public is a bystander and not an active player in the proposed governance arrangements. The document needs to provide for the people to:

- a. Have the right to communicate their own views on any issue to the Parliament of Tobago (and Trinidad) and to encourage members of the general public to do the same.
- b. Have access to routine methods of communicating their views to the government. These could include mandatory hearings on the budget and other issues of importance to Tobago, such as the Inter-Island Ferry Service.
  - i. Electronic participation can be considered in this context.

## **Tobago Divisions of the Public Service Commission and Teaching Service Commission (Clauses 15, 16 and 17)**

Although the Tobago Civil Service is recognized in its own right, there is insistence on the Public Service Commission having jurisdiction. The concession is two appointees from Tobago. Would this satisfy the needs of Tobago civil servants? If no specific provisions are made to address the matters from a policy and operational arrangement it would not adequately address the concerns. A major concern is that it isn't clear as to how transfers and promotions through the national service will work. Will Tobagonian Public Servants now working in Trinidad be able to seamlessly transfer home or be promoted home in Tobago? The same concern for Trinidadian Public Servants is being raised.

Additionally, the governance arrangements still leaves the Public Service without access to anti-corruption whistle-blower arrangements and the shelter of a legislature with adequate capacity for oversight and petitioning. This is inconsistent with the arrangements required for a competent, liberated and creative Public Service that can support Tobago's efforts to innovate and compete.

This country has witnessed how Political leaders have used their powers to unduly influence the promotion or positioning of public servants in an effort to silence "troublemakers". There are court cases where public servants have had to take politicians to court and win claims/judgement to preserve their rights as public servants. Evidently, just giving the Premier the power to advise the President, is an attempt to mirror a system that is faulty. It must also be noted, that while on the national level both the Prime Minister and the Opposition Leader are consulted, the Minority Leader is never consulted in the proposed arrangement for Tobago

## **Defining Tobago and its Jurisdiction**

In the Bill, Tobago is defined without legitimate economic-geographical boundaries. In particular, the applicable definition is “For the purposes of sections 53, 75A and Chapter 11A, a reference to “Tobago” means the Island of Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and the internal and inland waters of Tobago.”

Gone are the boundaries provided in the current THA Act: “the island of Tobago and such part of the territorial sea of Trinidad and Tobago comprising those areas of the sea having as their inner limits the baselines of Tobago as determined in accordance with section 5 of the Territorial Sea of Trinidad and Tobago Act, and as their outer limits, a line measured seaward from those baselines, every point of which is distant SIX nautical miles from the nearest point of those baselines”. The result is that Tobago won’t even have legislative control over its famous Buccoo Reef.

Gone too are the boundaries in the earlier Constitution (Amendment) (Tobago Self-Government) Bill, 2018, which proposed “Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and such area of the archipelagic waters of Trinidad and Tobago, including any islands, the seabed and the subsoil, that lies within eleven miles from the low water-mark of Tobago.

Nowhere in sight are the boundaries of the Tobago Self-Government Bill, 2016, which proposed that “Tobago shall comprise the island of Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and other off-shore islands and the archipelagic waters lying landward of the established straight base-lines the 12-mile territorial sea measured seawards from the said base-lines as well as the inland waters equidistant between the island of Trinidad and the island of Tobago and to the extent of the territorial sea of Trinidad and Tobago and the superjacent air-space above these aforementioned maritime areas and over the land-space.”

So, the desired natural economic-geographical jurisdiction of the Tobago Island Government defined in terms of the equidistant (median) line between Tobago and Trinidad is ignored. This is a denial of the natural rights of the people of Tobago. It even rejects and removes the boundaries of the existing THA Act #40, 1996, which provides for a jurisdiction up to 6-miles from baseline.

The absence of Tobago's natural boundaries is a deliberate barrier to Tobago's right to a specific formula and predictable arrangement to finance its push for development on behalf of the nation.

The issue surrounding the definition of Tobago is also tied to the larger issue of the authority of two legislatures to make laws for the same jurisdiction. There is precedence for this type of arrangement all around the world. This kind of dual jurisdiction can be found in Canada's Oceans Act, Sections 9, 20, 21, and 26 (The entire piece of legislation is attached).[See Images from Canada OceansAct]

#### **Application of provincial law**

**9 (1)** Subject to this section and to any other Act of Parliament, the laws of a province apply in any area of the sea

- (a) that forms part of the internal waters of Canada or the territorial sea of Canada;
- (b) that is not within any province; and
- (c) that is prescribed by the regulations.

#### **Limitation**

**(2)** Subject to any regulations made pursuant to paragraph 26(1)(d), subsection (1) does not apply in respect of any provision of a law of a province that

- (a) imposes a tax or royalty; or
- (b) relates to mineral or other non-living natural resources.

#### **Interpretation**

**(3)** For the purposes of this section, the laws of a province shall be applied as if the area of the sea in which those laws apply under this section were within the territory of that province.

#### **Sums due to province**

**(4)** Any sum due under a law of a province that applies in an area of the sea under this section belongs to Her Majesty in right of the province.

#### **Limitation**

**(5)** For greater certainty, this section shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any area of the sea in which a law of a province applies under this section or the living or non-living resources of that area, or as limiting the application of any federal laws.

#### **Application of federal laws — continental shelf installations**

**20 (1)** Subject to any regulations made pursuant to paragraph 26(1)(j) or (k), federal laws apply

- (a) on or under any marine installation or structure from the time it is attached or anchored to the continental shelf of Canada in connection with the exploration of that shelf or the exploitation of its mineral or other non-living resources until the marine installation or structure is removed from the waters above the continental shelf of Canada;
- (b) on or under any artificial island constructed, erected or placed on the continental shelf of Canada; and
- (c) within such safety zone surrounding any marine installation or structure or artificial island referred to in paragraph (a) or (b) as is determined by or pursuant to the regulations.

#### **Interpretation**

**(2)** For the purposes of subsection (1), federal laws shall be applied

- (a) as if the places referred to in that subsection formed part of the territory of Canada;
- (b) notwithstanding that by their terms their application is limited to Canada; and
- (c) in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

#### **Application of provincial law**

**21 (1)** Subject to this section and to any other Act of Parliament, the laws of a province apply to the same extent as federal laws apply pursuant to section 20 in any area of the sea

- (a) that forms part of the exclusive economic zone of Canada or is above the continental shelf of Canada;



- (b) that is not within any province; and
- (c) that is prescribed by the regulations.

#### Limitation

(2) Subject to any regulations made pursuant to paragraph 26(1)(d), subsection (1) does not apply in respect of any provision of a law of a province that

- (a) imposes a tax or royalty; or
- (b) relates to mineral or other non-living natural resources.

#### Interpretation

(3) For the purposes of this section, the laws of a province shall be applied as if the area of the sea in which those laws apply under this section were within the territory of that province.

#### Sums due to province

(4) Any sum due under a law of a province that applies in an area of the sea under this section belongs to Her Majesty in right of the province.

#### Limitation

(5) For greater certainty, this section shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any area of the sea in which a law of a province applies under this section or the living or non-living resources of that area, or as limiting the application of any federal laws.

### Orders and powers

(3) A court referred to in subsection (1) or (2) may make any order or exercise any power it considers necessary in respect of any matter referred to in that subsection.

### Criminal offences

(4) The jurisdiction and powers of courts with respect to offences under any federal law are determined pursuant to sections 477.3, 481.1 and 481.2 of the *Criminal Code*.

### Saving

(5) Nothing in this section limits the jurisdiction that a court may exercise apart from this Act.

### Definition of court

(6) In this section, **court** includes a judge of a court and a justice of the peace.

## Court Jurisdiction

### Jurisdiction extended

22 (1) Subject to subsection (4) and to any regulations made pursuant to paragraph 26(1)(h), a court that would have jurisdiction in respect of any matter had the matter arisen in a province has jurisdiction in respect of any such matter involving a federal law that applies pursuant to this Act to the extent that the matter arises in whole or in part in any area of the sea that is not within any province and

- (a) that area of the sea is nearer to the coast of that province than to the coast of any other province; or
- (b) that province is prescribed by the regulations.

### Jurisdiction extended — provincial laws

(2) Subject to any regulations made pursuant to paragraph 26(1)(h), a court that would have jurisdiction in

Current to April 20, 2021  
Last amended on July 30, 2019

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respect of any matter had the matter arisen in a province has jurisdiction in respect of any such matter involving a law of the province that applies pursuant to this Act to the extent that the matter arises in whole or in part in any area of the sea to which the law of that province applies pursuant to this Act.

### Orders and powers

(3) A court referred to in subsection (1) or (2) may make any order or exercise any power it considers necessary in respect of any matter referred to in that subsection.

### Recommendation — Minister of Justice

26 (1) The Governor in Council may, on the recommendation of the Minister of Justice, make regulations

(a) prescribing a work or a class of works for the purpose of the definition *marine installation or structure* in section 2;

(b) making any law of a province applicable in respect of any part of the area of the sea in which laws of the province apply under section 9 or 21, even though the law, by its own terms, is applicable only in respect of a particular area within the province;

(c) restricting the application of subsection 9(1) or 21(1) to such laws of a province as are specified in the regulations;

(d) making subsection 9(1) or 21(1) applicable, on the terms and conditions, if any, specified in the regulations, in respect of any laws of a province that impose a tax or royalty or relate to mineral or other non-living natural resources;

(e) excluding any law of a province from the application of subsection 9(1) or 21(1);

(f) determining or prescribing the method of determining the safety zone referred to in paragraph 20(1)(c);

(g) prescribing an area of the sea and a province for the purposes of subsection 9(1), 21(1) or 22(1);

(h) restricting the application of subsection 22(1), (2) or (3) to courts of a district or territorial division of a province;

(i) prescribing, in respect of any area of the sea and for the purpose of subsection 22(1), the manner of determining the province that has the coast nearest to that area;

(j) excluding any federal laws or laws of a province or any of their provisions from the application of subsection 20(1) or 21(1), as the case may be, in respect of any area in or above the continental shelf of Canada or in respect of any specified activity in any such area; and

(k) making federal laws or laws of a province or any of

(j) excluding any federal laws or laws of a province or any of their provisions from the application of subsection 20(1) or 21(1), as the case may be, in respect of any area in or above the continental shelf of Canada or in respect of any specified activity in any such area; and

(k) making federal laws or laws of a province or any of their provisions applicable, in such circumstances as are specified in the regulations,

(i) in the exclusive economic zone of Canada or in a portion of that zone,

(ii) in or above the continental shelf of Canada or a portion of that shelf, or

(iii) in any area beyond the continental shelf of Canada, where that application is made pursuant to an international agreement or arrangement entered into by Canada.

#### Restriction

(2) A regulation made pursuant to subsection (1) in relation to a law of a province may be restricted to a specific area or place or to a specific provision of the law.

#### Interpretation

(3) For the purposes of paragraphs (1)(j) and (k), federal laws and the laws of a province shall be applied

(a) as if the places referred to in any regulations made pursuant to either of those paragraphs formed part of the territory of Canada;

(b) notwithstanding that by their terms their application is limited to Canada or a province; and

(b) notwithstanding that by their terms their application is limited to Canada or a province; and

(c) in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

#### Publication of proposed regulations

**27 (1)** A copy of each regulation that the Governor in Council proposes to make pursuant to paragraph 25(b) or section 26 shall be published in the *Canada Gazette* at least 60 days before its proposed effective date, and a reasonable opportunity shall be given to interested persons and provinces to make representations with respect to the proposed regulation.

#### Exception

(2) No proposed regulation that has been published pursuant to this section need again be published under this section, whether or not it has been altered.

## **Misleading Advice from the Attorney General**

The Attorney General at the virtual Public Consultation partially misled the public on the advice he received from Ambassador Gerald Thompson. AG Al Wari worried Tobago by stating categorically that it was not only ill-advised to define Tobago in the Bill, but to also establish any part of Tobago waters for the jurisdiction of the Tobago Island Government. We have since made public a leaked copy of the said advice, which has not been disputed by the Attorney General.

While Ambassador Thompson did (wrongly) opine that it will be detrimental to our claim on marine boundaries to define Tobago, he also advised that Tobago should be allocated 11 miles (which is beyond the current 6 miles contained in Act 40 of 1996) in what he termed the “Tobago Marine Zone”. He went further to advise that there should be an established formula for the sharing of royalties from all resource exploration into the continental shelf. This goes beyond oil and gas.

A copy of that leaked advice is attached in the appendix of this document. Here are two (2) instructive quotes from that advice:

“Being geographically the most easterly and therefore the most seaward part of the Republic of Trinidad and Tobago, Tobago contributes to the unitary State by permitting Trinidad and Tobago to project its claim to the Continental Shelf and the Extended Continental Shelf appertaining to its landmass much deeper into the Atlantic Ocean than would be the case if Tobago did not exist or was not part of the Republic of Trinidad and Tobago. Accordingly, a strengthening of the draft provisions on revenuesharing from the resources of the Continental Shelf located in deeper waters, including the resources of the Extended Continental Shelf, is likely to yield a greater return to Tobago than an arguably misplaced focus on the prospects of ownership or even revenue-sharing from the hydrocarbon resources of the subsoil of the territorial sea. Such strengthening could conceivably include provisions for the deposit of a percentage of revenue earned from deep water

development of hydrocarbons into a recast Tobago Development Fund in which political control is lessened and citizen involvement is magnified” (Thompson, 2018 Page 10).

“It would in the circumstances be sufficient to delineate or demarcate an area around Tobago that is up to eleven (11) miles from the low-water mark on the coast of Tobago. Eleven miles is suggested as the upper limit for delineation of the Tobago Maritime Zone because anything in excess of 11 miles would involve a delimitation of the maritime space off the north east tip of Trinidad and the south west coast of Tobago. In any event, a Tobago Maritime Zone drawn from the low-water mark could result in a larger maritime area falling under the jurisdiction of the Tobago Legislature and the TIG than would have been possible from the application of a s.4 (b) of the Tobago House of Assembly Act, assuming that the provision could have been operationalised if it had been amended to cure the deficiency posed by the absence of any straight baselines off Tobago’s west coast” (Thompson, 2018 Page 11) .

Thompson suggested not using any of the terms in the international laws such as: Archipelagic, Territorial waters, Economic Exclusive Zone. We can creatively define Tobago without using those terms but by simply using distance.

Furthermore, when one looks at Scotland’s case, as per the Scotland Act of 1998, it remains part of the Unitary State of the United Kingdom, has full control of its entire Exclusive Economic Zone and has the ability to call a referendum to leave the Union if it so chooses. [See Images Below]

## **Using Scotland as Case Study S.1 Scotland Act 1998 (interpretation)**

“Scotland” includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland, “the Scottish zone” means the sea within British fishery limits (that is, the limits set by or under S.1 Fishery Limits Act (1976) which is adjacent to Scotland.

## **Fishery Limits Act (1976) S.1**

Subject to the following provisions of this section, British fishery limits extend to the seaward limits of any area for the time being designated by Order in Council under section 41(3) of the Marine and Coastal Access Act 2009 (exclusive economic zone).

## **Marine and Coastal Access Act 2009 (exclusive economic zone) S.41(3)**

Her Majesty may by Order in Council designate an area as an area within which the rights to which this section applies are exercisable (an “exclusive economic zone”).

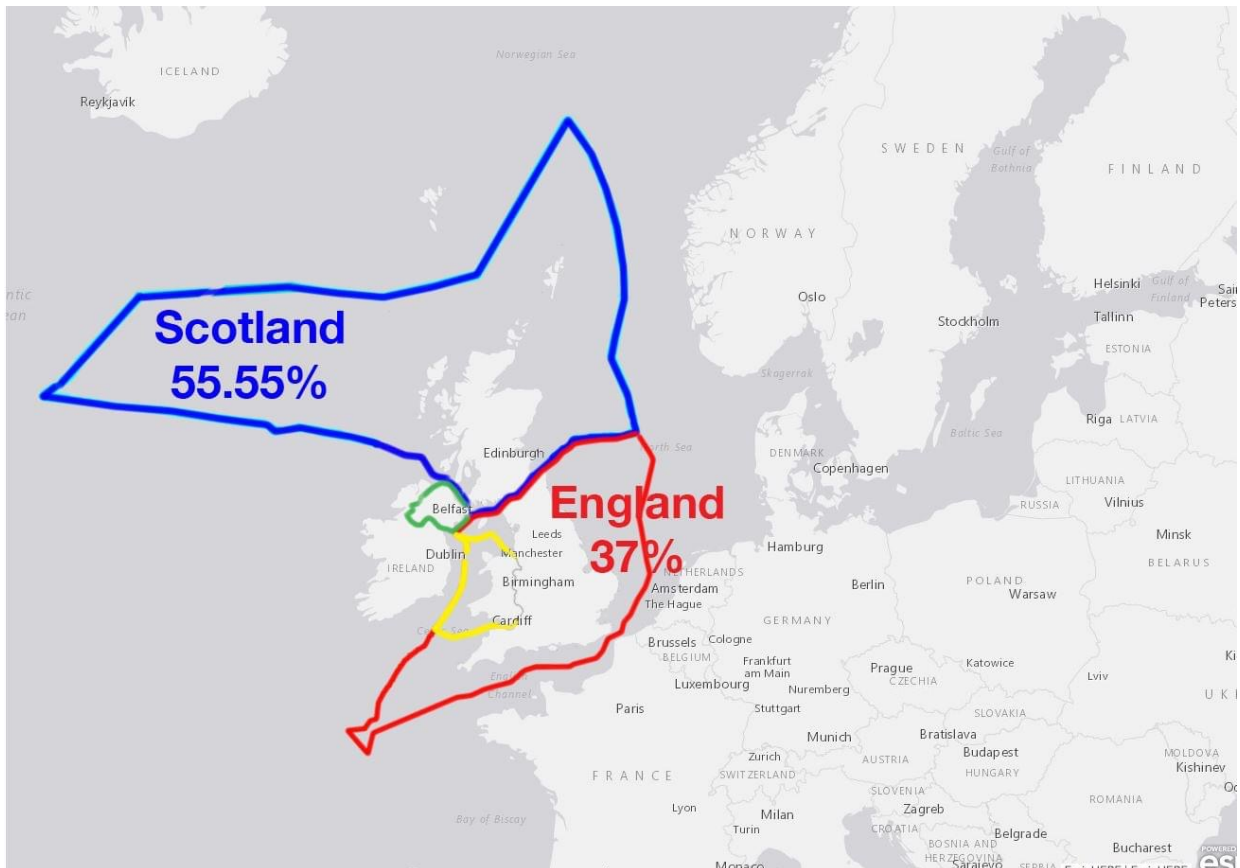
**S.41(4)** The Secretary of State may by order designate the whole or any part of the exclusive economic zone as an area in relation to which the Scottish Ministers, the Welsh Ministers or any Northern Ireland department are to have functions.

Other definitions can be used for Scotland's seas.

- [Internal Waters](#) adjacent to Scotland: **34,920 km<sup>2</sup>**
  - High water mark to the baseline of territorial sea
  - "Scottish onshore area" in the [Scotland Act 1998](#)
- [Territorial Sea](#) adjacent to Scotland: **90,400 km<sup>2</sup>**
  - High water mark to 12NM limit
  - "Scotland" in the [Scotland Act 1998](#)
  - "Scottish inshore region" in the [Marine and Coastal Access Act 2009](#)
  - "Scottish marine area" in the [Marine \(Scotland\) Act 2010](#)
- [Exclusive Economic Zone](#) adjacent to Scotland: **462,315 km<sup>2</sup>**
  - High water mark to Exclusive Economic Zone (EEZ) limit
  - "Scottish Zone" in the [Scotland Act 1998](#)
- [Continental Shelf](#) adjacent to Scotland: **617,643 km<sup>2</sup>**
  - High water mark to continental shelf limit
  - Extent of "Scottish inshore region" and "Scottish offshore region" in the [Marine and Coastal Access Act 2009](#)
- [Scottish inshore waters](#): **62,212 km<sup>2</sup>**
  - High water mark to 6NM limit
  - Extent of "Scottish inshore waters" in the [Inshore Fishing \(Scotland\) Act 1984](#)
- [Transitional and coastal waters](#) adjacent to Scotland: **48,710 km<sup>2</sup>**
  - High water mark to 3NM limit
  - Extent of "Transitional" and "Coastal" waters in the [Water Environment and Water Services \(Scotland\) Act 2003](#)

The area of sea can vary depending on the [map projection](#) and coastline scale used for the calculations. A more detailed coastline can introduce variations and additional islands and skerries.

Sources: [UKHO Maritime Limits](#) | [SEPA Transitional and Coastal Water Bodies](#).



## **Implications for the Blue Economy**

Should the current draft bills be passed as is, Tobago loses the significant potential for economic development. The Tobago Island Government's inability to legislate over the its waters means that any and every development agenda for the blue economy must pass through cabinet and the parliament and hopefully gain favour before it is explored. The blue economy opportunities that are shut out by these draft bills include (but are not limited to):

- a) Fisheries
- b) Aquaculture
- c) Coastal and Marine Tourism
- d) Marine Biology and Bioprospecting
- e) Extractive Industries: Non-Living Resources
- f) Desalination (freshwater generation)
- g) Renewable Marine (off-shore) Energy
- h) Maritime Transport, Ports, Marinas and Related Services, Shipping and Shipbuilding/  
boatbuilding
- i) Waste Disposal Management
- j) Ocean Monitoring and Surveillance
- k) Ecosystem-based Management
- l) Activities Supporting Carbon Sequestration (Blue Carbon)
- m) Supportive Financial Mechanisms

## **Financing**

Many of the arrangements of the Bill combine to produce an inadequate and unfair share of national revenues critical to Tobago's push for development. In the absence of adequate boundaries for Tobago, a gratuitous provision is made to give Tobago the following:

- a) An unjustified minimum of 6.8% of the budget, which is picked out of thin air and can even be judged as unfair to Trinidadians.
- b) A Fiscal Review Commission, which can determine if conditions require that Tobago be given more than 6.8%. The Commission comprises 3 members from the Cabinet and 2 from the THA:

This Commission is effectively another expression of the grab for colonizing powers over Tobago, since it is dominated by Cabinet. A gratuitous minimum and colonizing Fiscal Review Commission would not be required if Tobago is assigned its proper boundaries as defined by the equidistant line between the islands.

The Fiscal Review was intended to be undertaken by independent professional/technical personnel, the composition of the Commission by the Minister and the Secretary appear to militate against this concept. It should embody a revenue-sharing concept.

The permission for borrowing being left to the Minister has proven counter productive over the years, this is the first year (2021) since 1996 that the THA has been able to access loans.

Management of Investments by Central Bank, is this done for the Central Government? No. Would Central bank have a presence in Tobago and help in formulating Fiscal Policy? There is also no guaranteed disbursement timeframe as is contained in the current law.

The financial appropriation to Tobago should be a one line item in the national budget with the internal allocations to be done subsequently by the Tobago Island Government. What's the usefulness of creating a budget to be sent to the Minister of Finance, who then allocates strictly base



on a prescribed percentage and never above? Why not simply allocate the finances and allow the Tobago Island Government do its budgetary allocations internally?

On the vexed matter of fixing proper provisions for national development opportunity for Tobago in the Constitution, it is noted that on the basis of the equidistant line, Tobago can be granted a fair and predictable share of revenues based on internationally tested and trusted principles applying the facts of the local case:

- A. Recurrent revenues as determined by an equal share for every citizen, which would assigned Tobago a share of national recurrent expenditures equal to its share of the population. This was the precedent set by the Dispute Resolution Commission.
- B. Development revenues assigned by a share of development expenditures equal to the arithmetic mean of the population share (5%) and the share of the economic geographical space for which Tobago is responsible to develop (60%). This approach is fair and predictable, and avoids the politicized, gratuitous and colonizing approach of the proposed bills of the Central Government. It removes the discretion of the Minister of Finance in Trinidad and gives Tobago firm foundations for launching a credible development program on the national account.

## Formalized Denial of Self-Determination and Equality of Status

The governance arrangements in the Bill also include formalized denials of self-determination and equality of status:

- a. The Central Government reserves the right to intervene in the governance of Tobago whenever it deems that a crisis exists that demands that intervention. Only the Central Government is empowered to define those crisis conditions.
  - i. Section 11(1) “There shall be a Cabinet for Trinidad and Tobago which shall have—(b) in relation to Tobago, no responsibility for the matters set out in the Fifth Schedule, **unless there is an emergency or unforeseen circumstance requiring the intervention of the Cabinet.**”
- b. The Central Government dominates the **dispute resolution process**. In 144:
  - i. The Constitution is amended by creating a 5-member Mediation Committee, comprising:
    1. the Prime Minister, who shall be the Chairman or his alternate;
    2. Two Cabinet members
    3. the Premier, who shall be the Vice Chairman or his alternate;
    4. one person appointed from the Executive Council.
  - ii. The Mediation Committee shall have the jurisdiction to mediate or mitigate any disputes that may arise in relation to the exercise of administrative powers set out in the Fifth Schedule.
  - iii. So here, the parties to the dispute (Cabinet and the Executive Council), who are also responsible to trigger the dispute, are members of the Mediation Committee. This is contrary to standard practice in which disputes are

resolved by the courts of by impartial special-purpose vehicles endowed with judicial powers, as in the current THA Act.

c. The Central Government dominates the process of determination of the budget to be assigned to Tobago. It proposes:

i. A 6.8% minimum budgetary allocation

ii. Adjustment upwards under a Fiscal Review Commission dominated by the

Cabinet, because it comprises:

1. a Chairman, who shall be the Minister with responsibility for finance or his alternate;

2. a Deputy Chairman, who shall be the Secretary with responsibility for finance or his alternate;

3. one member appointed by the Tobago Executive Council; and

4. two members appointed by the Cabinet.

iii. Borrowing arrangements delinked from the economic performance of Tobago

and approved by the Minister of Finance. It is also promised that the Minister would “normally approve” Tobago’s borrowing requests.

The governance arrangements include provisions for the Parliament in Trinidad to prescribe rules of conduct of the Tobago Island Government. In Section 141C(4):

“In other respects, the powers, privileges and immunities of the House of Assembly, Members and committees of the House of Assembly, shall be such as may from time to time be prescribed by Parliament”.

## **Conclusion**

In the pursuit of autonomy, Tobago insists that This Bill should construe Tobago's autonomy as a Tobago Bill of Rights, featuring:

- A. Explicitly defined appropriate (economic geographical) boundaries of Tobago and a related fair share of national development financing for Tobago. Here, Tobago will have to be defined using the median (equidistant) boundary line between itself and Trinidad.
- B. The right of the people of Tobago to petition and oversee their government without fear of political victimization and other retribution.
- C. The right of the people of Tobago to design and establish a (democratic) government of their choice, including all rules governing the conduct of the representatives of the people.
- D. The right of the people of Tobago to develop the Tobago economy in the interest of the island and the nation.
- E. The right of the people of Tobago to agree to any prescribed powers of the Government of Trinidad and Tobago and to all reserved (unprescribed) powers.
- F. The right of the people of Tobago to concurrence whenever, with respect to the prescribed powers of the Government of Trinidad and Tobago, any decision is made in the Parliament of Trinidad and Tobago that will have a direct effect on Tobago.

Once the above is done, it sets the stage for granting Tobago autonomy in a fair manner.

## **The Way Forward**

Fresh drafts that are more in line with what Tobago submitted in 2016 must be done. Unfortunately, the draft bills must be rejected!



# APPENDICES

# APPENDIX 1

Advice from  
Ambassador  
Gerald Thompson

## **Opinion on certain maritime aspects of the draft Bill for an Act to Amend the Constitution of the Republic of Trinidad and Tobago to accord self-government to Tobago, to repeal the Tobago House of Assembly Act, Chap. 25:03 and for related matters**

The policy to which the draft Bill seeks to give legislative expression is the grant of full internal self-government to Tobago as an integral part of the sovereign democratic Republic of Trinidad and Tobago. It is noteworthy that the policy of conferring greater autonomy on the proposed Tobago Island Government (**TIG**) is consistent with the thrust in Trinidad to grant greater devolution of authority to the Municipal Corporations.

Clause 4 of the draft Bill seeks, *inter alia*, to amend the Constitution to provide for definitions of the Island of Trinidad and the Island of Tobago in relation to the archipelagic baselines as well as the archipelagic waters and the territorial sea now appertaining to the republic of Trinidad and Tobago. The draft Bill in Clause 4(5) seeks to delineate a maritime area over which the Tobago Island Government would have jurisdiction. There is also language in Clause 4 which refers to the exercise by Trinidad and Tobago of sovereign rights over the living and non-living resources of the Exclusive Economic Zone (**EEZ**) and “**its**” continental shelf. It is to be noted in this regard that Trinidad and Tobago’s claim to the continental shelf is not restricted to the seabed and subsoil of the 200-mile EEZ but extends much further to 350 nautical miles from the territorial sea baselines and beyond.

In treating with the delineation of a maritime area over which the relevant Tobago institutions would have jurisdiction, taking into account the island’s constitutional history and the separation of its population by sea from Trinidad, consideration would need to be given to:

- (a) whether the jurisdiction to be conferred on the proposed TIG should extend to a designated area of maritime space around the island of Tobago (hereinafter referred to as the “Tobago Maritime Zone”);
- (b) how should the Tobago Maritime Zone be delineated or demarcated;
- (c) the envisaged spatial extent of the Tobago Maritime Zone; and
- (d) the powers and responsibilities exercisable by the TIG in the proposed Tobago Maritime Zone.



***Whether the jurisdiction to be conferred on  
the proposed Tobago Island Government  
should extend to the Tobago Maritime Zone***

It is not unreasonable to adopt the position that the TIG should possess the power to enforce its laws in the sea surrounding Tobago. If it were otherwise, the TIG would lack the authority to enforce certain laws relating to activities or operations in the waters adjacent to Tobago. For example, as part of its regulation of the use of certain equipment in the waters surrounding Tobago, the TIG may decide to impose restrictions on where such equipment may be used. It would need to have the requisite jurisdiction conferred by Parliament in order to enforce any such laws. As part of its responsibilities in telecommunications, the TIG would need to be vested with the authority to deal with violators of the relevant laws who might base their operations at sea in the waters surrounding Tobago in order to avoid the reach of a Government whose remit extends only to the terrestrial sphere and stops at the low-water mark.

Likewise, if the powers and responsibilities of the TIG include fisheries, it would need to have a clearly delineated maritime space over which its jurisdiction could be exercised. It is relevant to note in this regard that fisheries is one of those areas in respect of which the Republic of Trinidad and Tobago maintains, by treaty or agreements and arrangements made pursuant to various treaties, obligations to the other States of the international community which can only be properly carried out by the Central Government.

Accordingly, it is important to consider that any conferment of authority on the TIG for fisheries in the Tobago Maritime Zone would have to be made subject to the continuing authority of the Central Government to treat in that Zone with those fisheries matters for which it continues to have international responsibility on behalf of the Republic of Trinidad and Tobago. Any fisheries laws made by the Tobago Legislature would need to respect this existing separation of powers and responsibilities.

Management of the operational issues which would inevitably arise, in fisheries and other sectors, when two different entities exercise concurrent jurisdiction in the same space would need to be addressed and clarified in memoranda of understanding or protocols developed by the relevant divisions of the Central Government and the TIG.

In this regard, it is noteworthy that s.4 of the Tobago House of Assembly Act states in pertinent part as follows:

“4. No provision of this Act or of an Assembly Law shall be construed or interpreted so as to authorise—

(a) ...

(b) any operation of any Assembly Law beyond the confines of the island of Tobago and such part of the territorial sea of Trinidad and Tobago comprising those areas of the sea having as their inner limits the baselines of Tobago as determined in accordance with section 5 of the Territorial Sea Act, and as their outer limits, a line measured seaward from those baselines, every point of which is distant six nautical miles from the nearest point of those baselines unless the contrary is expressly stated therein;

(c) ...”

It is evident that the current *Tobago House of Assembly Act (THA Act)* envisages in s.4(b) that the operation of any Assembly Law would extend up to a distance of six nautical miles measured from the territorial sea baselines of Tobago as determined in accordance with s.5 of the *Territorial Sea Act*. The territorial sea baselines mentioned in s.5 of the *Territorial Sea Act* are in fact the archipelagic baselines of Trinidad and Tobago from which the breadth of the territorial sea of the State of the Republic of Trinidad and Tobago is measured. It is not known whether this provision of the THA Act has ever been operationalised.

In the course of extending the reach of Assembly Laws to the territorial sea, s.4(b) creates an implementation gap that could not have been intended when it describes the space over which the Laws would apply as constituting “*the island of Tobago and such part of the territorial sea ...*” By completely ignoring the archipelagic waters intervening between the land and the territorial sea, this description leads to an irrational result in which Assembly Laws would be capable of being applied on land and in the territorial sea but not in the intervening archipelagic waters.

Section 4(b) of the THA Act suffers from a second major defect. In the effort to define Tobago so as to include some maritime space over which Assembly Laws would be applied, Tobago is defined with reference to “*the baselines of Tobago as determined in accordance with section 5 of the Territorial Sea Act*”. Manifestly, no such separate archipelagic baselines exist for Tobago (or for Trinidad) in accordance with s.5 of the *Territorial Sea Act*.

Whether or not *s.4(b)* has ever been operationalised, there is no gainsaying that this important provision of the existing THA Act is so defective as to render its effective implementation unlikely or problematic at best. Section 4(b) of the THA Act is relevant to a consideration of Clauses 4(4) and 4(5) of the draft Bill because they are both premised on the existence of archipelagic baselines separately around Trinidad and separately around Tobago. The draft Bill avoids the first defect of *s.4 (b)* of the THA Act by making specific mention of the archipelagic waters around Tobago, but it nevertheless imports the second major defect where it purports to define the Island of Trinidad and the Island of Tobago in relation to non-existent baselines around Trinidad and Tobago respectively. It bears repeating that the straight archipelagic baselines referred to in *s.5* of the *Territorial Sea Act* are baselines around Trinidad and Tobago and not baselines separately around Trinidad and separately around Tobago.

The first question may, therefore, be answered in the positive by virtue of the arguments advanced above as well as by reference to the intendment, not the actual operation, of *s.4(b)* of the THA Act. In sum, as a practical matter, the TIG would need to exercise some jurisdiction in the waters adjacent to the shores of Tobago. But, importantly, *s.4(b)* of the THA Act does not offer an appropriate guide as to how the Tobago Maritime Zone should be delineated or demarcated.

#### ***How should the Tobago Maritime Zone***

##### ***be delineated or demarcated***

The current draft Bill produced by the Tobago House of Assembly proposes that there should be a definition for the Island of Trinidad and the Island of Tobago as constituent parts of the Republic of Trinidad and Tobago. The Island of Trinidad is defined by reference to the archipelagic waters and the territorial sea of the Republic of Trinidad and Tobago adjacent to it. Likewise, the Island of Tobago is defined by reference to the archipelagic waters and the territorial sea of the Republic of Trinidad and Tobago adjacent to it. The resulting overlapping archipelagic waters and territorial sea between the Island of Trinidad and the Island of Tobago are then delimited by an equidistant line between north east Trinidad and south west Tobago.

It is noted that the approach to the creation in the draft Bill of what is here referred to as the Tobago Maritime Zone appears to be guided by the language and intent of s.4 (b) of the Tobago House of Assembly Act. Nevertheless, this approach is seriously flawed for the following reasons:

- (a) it presupposes that the archipelagic baselines can be divided up so as to allocate, attribute or otherwise appropriate some baselines or parts of some baselines and the waters they enclose as well as the seabed and subsoil and air space thereof separately to Trinidad and to Tobago; and
- (b) it assumes that proximity is a proper basis for allocation, attribution or appropriation of archipelagic waters and associated territorial sea and the rights associated therewith, notwithstanding the fact that the whole Republic of Trinidad and Tobago, from Charlotteville to Cedros, contributed to Trinidad and Tobago satisfying the water to land ratio of between 1 to 1 and 9 to 1 provided for in Article 47(1) of UNCLOS for the designation of archipelagic status.

Like the archipelagic baselines, the archipelagic waters and territorial sea, the sovereignty of the Republic of Trinidad and Tobago is not divisible and may not be shared in the way that Clause 4 of the draft Bill may unintentionally suggest.

UNCLOS, other rules of international law and the practice of States provide no support for the bifurcation of the archipelagic waters and territorial sea as proposed in the draft Bill.

### **Relevant International Law**

It is settled international law that in the archipelagic waters and territorial sea the coastal State enjoys sovereignty and may exercise rights analogous to those exercised on its land territory, subject to the right of innocent passage by ships of other States.

The 1982 United Nations Convention on the Law of the Sea (**UNCLOS**) accordingly provides at Articles 2 and 49 as follows:

*“Article 2*

*Legal status of the territorial sea, of the air space*

*over the territorial sea and of its bed and subsoil*

- 1. The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.*
- 2. This sovereignty extends to the air space over the territorial sea as well as to its bed and subsoil.*
- 3. The sovereignty over the territorial sea is exercised subject to this Convention and to other rules of international law.*

*Article 49*

*Legal status of archipelagic waters, of the air space*

*over archipelagic waters and of their bed and subsoil*

- 1. The sovereignty of an archipelagic State extends to the waters enclosed by the archipelagic baselines drawn in accordance with article 47, described as archipelagic waters, regardless of their depth or distance from the coast.*
- 2. This sovereignty extends to the air space over the archipelagic waters, as well as to their bed and subsoil, and the resources contained therein.*
- 3. This sovereignty is exercised subject to this Part.*

4. *The regime of archipelagic sea lanes passage established in this Part shall not in other respects affect the status of the archipelagic waters, including the sea lanes, or the exercise by the archipelagic State of its sovereignty over such waters and their air space, bed and subsoil, and the resources contained therein."*

Article 2 of UNCLOS unquestionably embodies both conventional and customary international law on the legal status of the territorial sea, of the air space over it and of the seabed and subsoil below it. Similarly, Article 49 of UNCLOS, in terms wholly coincident in substance and largely coincident in language with Article 2, embodies both conventional and customary international law on the legal status of archipelagic waters, of the air space over it and of the seabed and subsoil below it.

There are no archipelagic baselines separately enclosing Trinidad and no archipelagic baselines separately enclosing Tobago. The archipelagic baselines are indivisible. Map 1 demonstrates the existing fact that Trinidad and Tobago together satisfies the requirement in Article 47(1) of UNCLOS for the designation of archipelagic status. The total water area of the established archipelagic waters is approximately 7128.8 sq km versus the total land area contained within which is approximately 5181.2 sq km. The ratio of the two works out to approximately 1.376 to 1.

On the other hand, Maps 2 and 3 demonstrate that, separately, neither Trinidad nor Tobago can satisfy the requirement in Article 47(1) for the designation of archipelagic status. Regarding Map 2, the total water area of the possible claim of archipelagic waters for Trinidad is approximately 3282.4 sq km versus the total land area contained within which is approximately 4863.6 sq km. The ratio of the two works out to approximately 0.675 to 1. Regarding Map 3, the total water area of the established archipelagic waters for Tobago is approximately 125.8 sq km versus the total land area contained within which is approximately 317.6 sq km. The ratio of the two works out to approximately 0.396 to 1.

Assuming, therefore, that it was possible to divide the archipelagic baselines between Trinidad and Tobago, on the basis of the evidence contained in Maps 1, 2 and 3, it is difficult to discern any rational basis exists for attributing, even notionally, part of the archipelagic baselines to Trinidad and part to Tobago.

There is nothing to suggest in either Article 2 or 49 that it is possible to segment or apportion the archipelagic waters or the adjacent belt of territorial sea, qua archipelagic waters and territorial sea, and the sovereignty over the archipelagic waters, territorial sea, the air space above these areas as well as the seabed and subsoil below these waters to parts of the coastal State. Territorial sovereignty and sovereign rights in respect of the resources of the continental shelf adjacent to their coasts are attributes of coastal States themselves and not of their constituent parts.

## **The Practice of States in their Municipal Law**

Several federal States including, the United States of America and Canada and unitary States with special constitutional arrangements such as the United Kingdom have had to deal with demands from those political divisions of the State with coastal frontages for ownership of maritime space, or ownership of the mineral resources of the seabed and subsoil, or for equitable sharing of the revenue generated by the development of the mineral resources, particularly, hydrocarbons, of the Continental Shelf.

### **United States of America**

In the United States pursuant to the *Submerged Lands Act* passed by Congress in 1953, the seaward extent of the jurisdiction of the littoral states of the Federation are as follows:

- Texas and the Gulf coast of Florida are extended 3 marine leagues (9 nautical miles) seaward from the baselines from which the breadth of the territorial sea is measured.
- Louisiana is extended 3 U.S. nautical miles seaward of the baselines from which the breadth of the territorial sea is measured.
- All other States' seaward limits are extended 3 International Nautical Miles seaward of the baselines from which the breadth of the territorial sea is measured.<sup>1</sup>

Although power over navigation, commerce and international affairs was specifically retained by the United States under the Act, the grant to the states was quite broad, including the mineral, fishery and plant resources of the seabed and water column.

When in 1976 Congress passed the *Fishery Conservation and Management Act* which extended United States fisheries management jurisdiction to 200 miles seaward of the territorial sea baselines, state control over the fishery within the three mile zone was retained. The states continue to manage fisheries in the territorial sea subject to constitutional restraints, pre-emption by inconsistent federal law, and the possibility of federal override of state jurisdiction by the Secretary of Commerce in the case of fish stocks found predominantly within the 197-mile zone seaward of state jurisdiction.<sup>2</sup>

### **Canada**

In Canada the Courts have consistently ruled that sovereignty of the territorial sea was vested in the State and not the provinces, unless the constitutional and historical record of the province indicated that a different outcome was legally merited.

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<sup>1</sup> U.S. nautical mile = 6080.2 feet; International nautical mile = 6076.10333 feet.

<sup>2</sup> Thomas J. Schoenbaum & Frank Parker Jr., *Federalism in the Coastal Zone: Three Models of State Jurisdiction and Control*, 57 N.C. L. Rev. 231 (1979).

In Newfoundland and Labrador given its peculiar constitutional position when it joined the Union in 1949, the provincial Court of Appeal held that the province exercises jurisdiction from the low-water mark on the coast to three (3) miles offshore; jurisdiction from three (3) to twelve (12) miles rests with Canada. The Court of Appeal decided in favour of Canada in respect of rights available on the continental shelf.

In the *Hibernia Reference*, the *British Columbia Reference* and the *Newfoundland Reference*<sup>3</sup>, the Supreme Court of Canada has decided in favour of Canada with respect to continental shelf rights. The Court has held for a province to sustain a claim to continental shelf rights, there would need to be clear evidence from the constitutional or historical records that the province had been in a position to acquire, and had acquired extra-territorial rights of a nature that allowed it to claim jurisdiction over the Continental Shelf.

The main jurisdictional disputes over rights to the continental shelf ended in 1985 when the Government of Canada entered into joint management and revenue-sharing agreements with the provinces in respect of the hydrocarbon resources of the Continental Shelf. The provinces will be entitled to collect revenues from continental shelf operations as if the resources were located on land.

## **United Kingdom**

In 2010 it was estimated that the Scottish share of total oil production in the United Kingdom Continental Shelf was more than 95% while for gas it was 58%. The Scottish share of total hydrocarbon production (including natural gas liquids) was 80%. The Scottish share of tax revenues generated from the oil and gas industry exceeded 90%. This reflected the much higher value of oil compared to gas.

It was estimated in 2010 that if Scotland were to obtain a "geographical share" of revenues based on the median line, about 90% of the United Kingdom's oil resources would be under Scottish jurisdiction.

Notwithstanding its dominant contribution to hydrocarbon production in the United Kingdom, as part of the unitary State, Scotland receives a per capita share of the revenues accruing to the Government from the production of oil and gas in the North Sea.

## **Revenue sharing**

The draft Bill does contemplate equitable revenue sharing from the mineral resources of Trinidad and Tobago's Continental Shelf. Presumably, the request for revenue sharing would apply as well to the Extended Continental Shelf in respect of which the United Nations Commission on the Limits of the

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<sup>3</sup> Ian Townsend Gault, *Jurisdiction over the Petroleum Resources of the Canadian Continental Shelf: The Emerging Picture*, XXIII No. 1 Alberta L. Rev. 75 (1985)



Continental Shelf (**CLCS**) now has for consideration a submission from Trinidad and Tobago made in 2009 to extend the State's continental shelf jurisdiction beyond 200 nautical miles from the territorial sea baselines.

To the extent that the draft Bill seeks to define Tobago by reference to the archipelagic waters and the territorial sea, it may also contemplate ownership of the mineral resources located within the waters of Tobago as defined. For the reasons already adumbrated, such a claim would be technically fraught and could give rise to some foreseeable constitutional difficulties, including on equal treatment grounds. The revenue-sharing provisions addressed later in the draft Bill would avoid this potential constitutional hurdle.

In any event, from a practical standpoint, it is worth considering whether advancement of such a claim would be a worthy issue for negotiation and compromise, especially when regard is had to the fact that the geology and geomorphology of the seabed and subsoil of the area near to Tobago suggests that the prospects of finding hydrocarbons in commercial quantities within the territorial sea so close to the shores of Tobago may not be particularly promising.

Being geographically the most easterly and therefore the most seaward part of the Republic of Trinidad and Tobago, Tobago contributes to the unitary State by permitting Trinidad and Tobago to project its claim to the Continental Shelf and the Extended Continental Shelf appertaining to its landmass much deeper into the Atlantic Ocean than would be the case if Tobago did not exist or was not part of the Republic of Trinidad and Tobago. Accordingly, a strengthening of the draft provisions on revenue-sharing from the resources of the Continental Shelf located in deeper waters, including the resources of the Extended Continental Shelf, is likely to yield a greater return to Tobago than an arguably misplaced focus on the prospects of ownership or even revenue-sharing from the hydrocarbon resources of the subsoil of the territorial sea. Such strengthening could conceivably include provisions for the deposit of a percentage of revenue earned from deep water development of hydrocarbons into a recast Tobago Development Fund in which political control is lessened and citizen involvement is magnified.

Since the national budget currently is based in part on revenues received from the development of the hydrocarbon resources of the Continental Shelf and Tobago presently receives a share of the budget based on the recommendation of the **Dispute Resolution Commission**, if a formula is devised to permit the deposit of a share of the revenue from the development of the resources of the Continental Shelf and Extended Continental Shelf into the Tobago Development Fund, such a formula would need to avoid Tobago being seen to dip twice into the same revenue stream.

## **Definition of Trinidad and Tobago**

Section 1(2) of the Constitution of the Republic of Trinidad and Tobago provides as follows:

*“Trinidad and Tobago shall comprise the Island of Trinidad, the Island of Tobago and any territories that immediately before the 31st day of August 1962 were dependencies of Trinidad and Tobago, including the seabed and subsoil situated beneath the territorial sea and the continental shelf of Trinidad and Tobago (“territorial sea” and “continental shelf” here having the same meaning as in the Territorial Sea Act and the Continental Shelf Act, respectively), together with such other areas as may be declared by Act to form part of the territory of Trinidad and Tobago.”*

The opportunity should be taken to amend this sub-section of the Constitution to introduce the concept of archipelagic waters before mention is made of the territorial sea. The definition of the Republic of Trinidad and Tobago used in current Double Taxation and Air Services Agreements may be adopted or adapted for this purpose.

### ***The envisaged spatial extent***

#### ***of the Tobago Maritime Zone***

Assuming that the stated defects did not impair the definitions of Trinidad and Tobago in Clauses 4(4) and 4(5) of the draft Bill, the mere attribution of part of the archipelagic waters and territorial sea to Trinidad and part to Tobago, without more, might lead to the impression that, subject to the right of innocent passage by other States, these two constituent parts of the Republic of Trinidad and Tobago would enjoy in their respective maritime areas, sovereignty over the waters, the living resources of the water column, the non-living resources of the seabed and subsoil, and the air space above these areas. If, rather, it is intended that Parliament would confer certain limited, shared or negotiated rights on the Tobago Legislature and the TIG, in the context of a purely domestic arrangement between the Tobago House of Assembly and the Central Government of the Republic of Trinidad and Tobago, then the definition of the Island of Tobago and the Island of Trinidad as proposed in the draft Bill is not necessary.

Of course, the indivisibility of both the archipelagic waters and the territorial sea appertaining to the Republic of Trinidad and Tobago as well as the sovereignty which the coastal State enjoys in these maritime areas does not mean that the State is unable, as part of a purely domestic arrangement, to confer certain powers and responsibilities on constituent parts of the coastal State. Bearing in mind that Trinidad and Tobago’s rights in respect of the territorial sea, archipelagic waters and Continental Shelf arise not from domestic law but from its legal basis of title under international law, the State is free to confer powers and responsibilities on its political divisions, while respecting the international obligations that it is tasked with fulfilling on the international plane.

Whether a delimitation of the maritime space between Trinidad and Tobago would be necessary or desirable would depend, in part, on:

- (a) the powers and responsibilities which are to be conferred on the Tobago Legislature and the TIG;
- (b) the powers and responsibilities which would continue to reside with the Central Government in relation to Tobago; and
- (c) the arrangements proposed in the draft Bill for enhanced sharing of revenue derived from the development of the hydrocarbon resources of the continental shelf and extended continental shelf.

It would in the circumstances be sufficient to delineate or demarcate an area around Tobago that is up to eleven (11) miles from the low-water mark on the coast of Tobago. Eleven miles is suggested as the upper limit for delineation of the Tobago Maritime Zone because anything in excess of 11 miles would involve a delimitation of the maritime space off the north east tip of Trinidad and the south west coast of Tobago.

In any event, a Tobago Maritime Zone drawn from the low-water mark could result in a larger maritime area falling under the jurisdiction of the Tobago Legislature and the TIG than would have been possible from the application of a s.4 (b) of the Tobago House of Assembly Act, assuming that the provision could have been operationalised if it had been amended to cure the deficiency posed by the absence of any straight baselines off Tobago's west coast.

***The powers and responsibilities exercisable by***

***the TIG in the proposed Tobago Maritime Zone***

It is recognised that the powers and responsibilities of the Tobago Legislature and the TIG would be subject to the stated residual powers and responsibilities of the Central Government in Tobago. Likewise, the jurisdiction conferred in respect of the Tobago Maritime Zone would need to be subject to:

- (a) applicable constitutional restraints;
- (b) pre-emption by inconsistent laws of the Republic of Trinidad and Tobago; and
- (c) the possibility of Central Government override of Tobago jurisdiction in the case of fish stocks found in the EEZ predominantly outside of the Tobago Maritime Zone or which are subject to international rules and regulations binding on the Republic of Trinidad and Tobago.

## **Conclusion:**

The Republic of Trinidad and Tobago as a whole contributed to Trinidad and Tobago being able to satisfy the formula for drawing archipelagic baselines in accordance with Article 47(1) of UNCLOS. The archipelagic baselines are therefore indivisible.

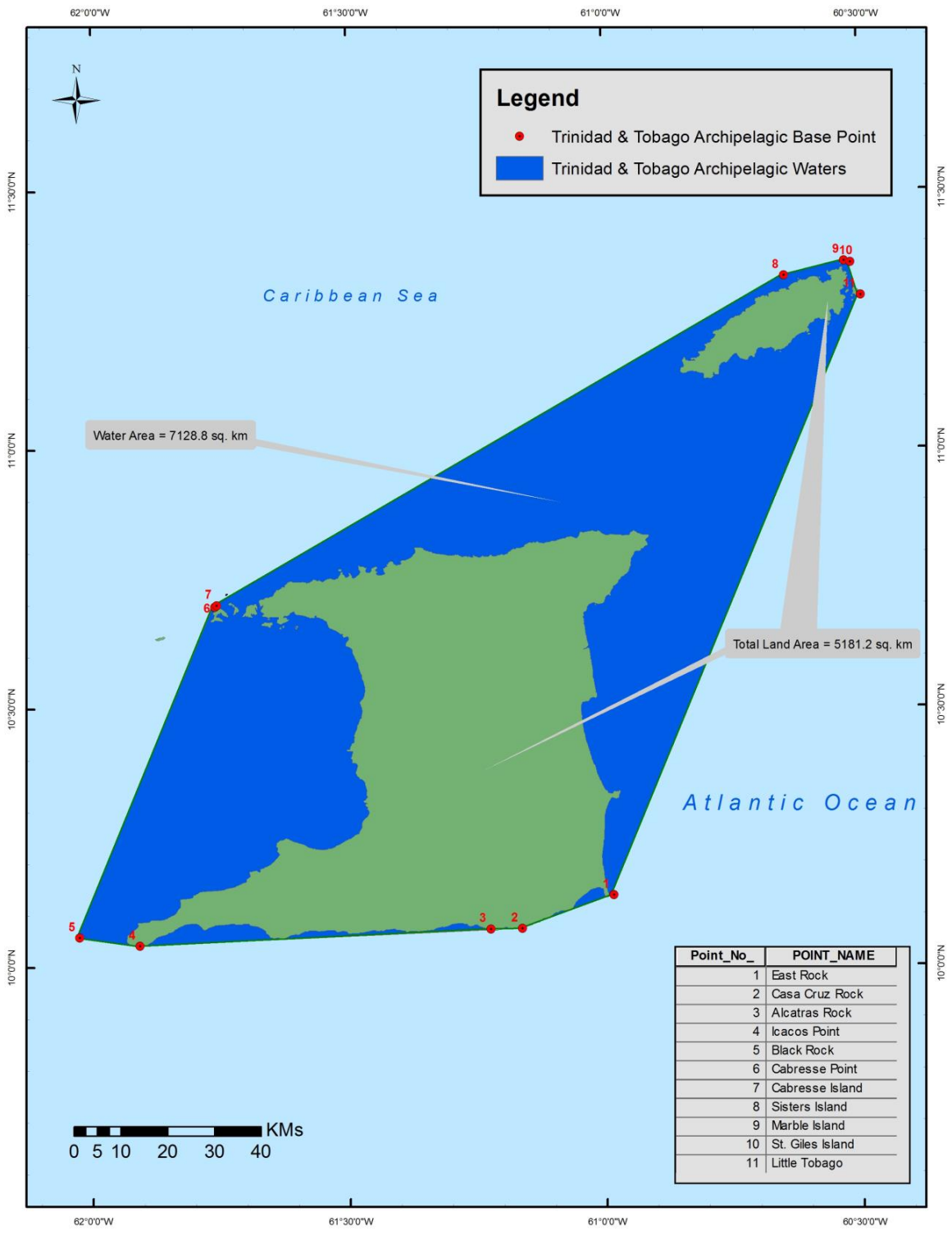
It is not necessary to distinguish between the various maritime zones - archipelagic waters, territorial sea, EEZ and Continental Shelf – appertaining to Trinidad and Tobago under international law when conferring powers and responsibilities on political divisions of the State, provided it is recognised that, subject to the right of innocent passage, rights of the coastal State in the archipelagic waters and territorial sea are analogous to the rights on land, but the rights in the EEZ and Continental Shelf include sovereign rights in respect of the natural resources which do not extend to sovereignty over these two maritime zones.

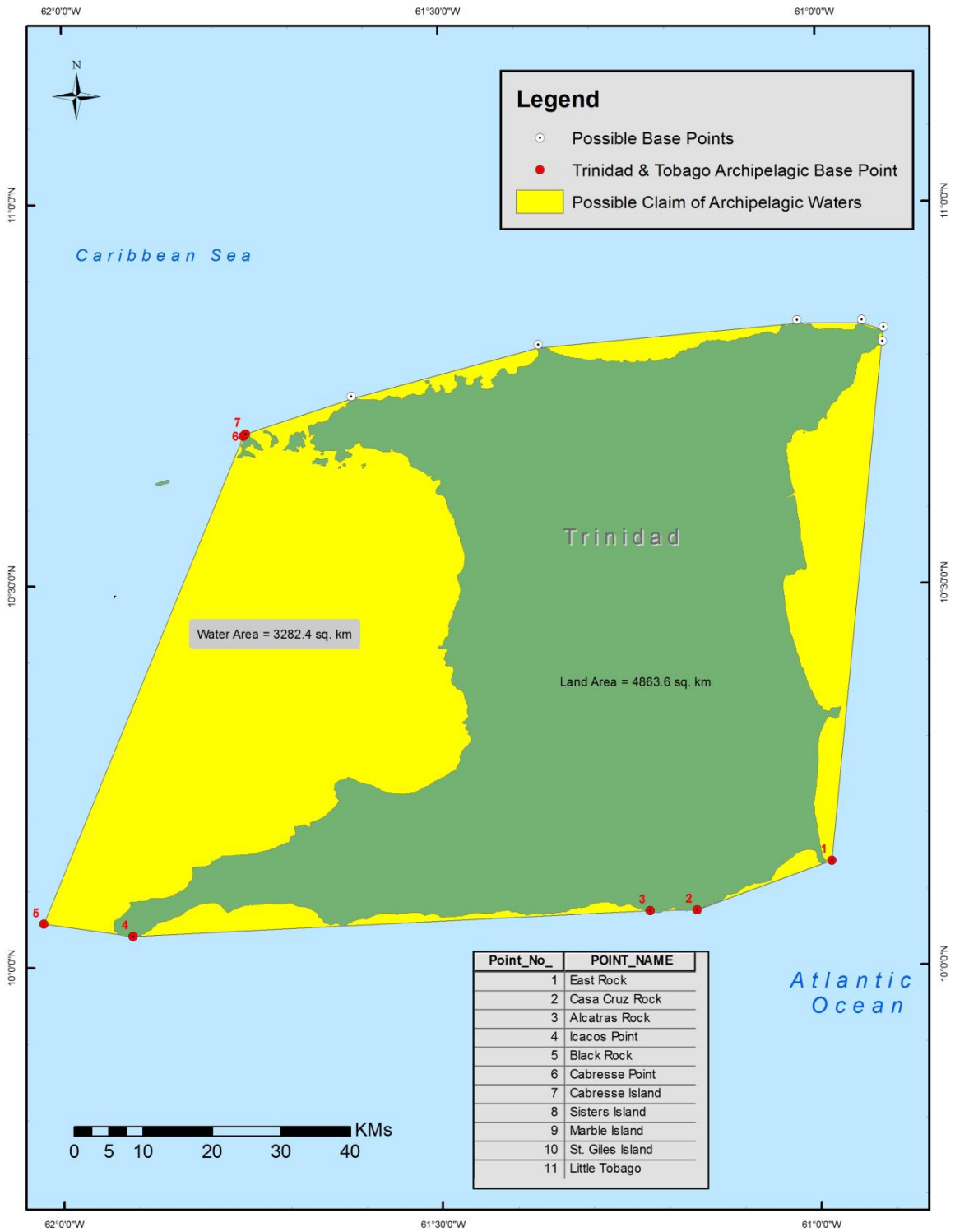
The equidistant line provision in Clause 4 of the draft Bill is undesirable because it is designed to bifurcate the archipelagic waters and territorial sea and to attribute part of these maritime zones, over which the State is sovereign under international law and domestic law, to Trinidad and to Tobago, respectively. It is also unnecessary because a similar outcome can be secured by a maritime zone established seaward of the low-water mark off Tobago, without reference either to archipelagic waters or the territorial sea and without recourse to maritime delimitation between the island of Trinidad and the island of Tobago.

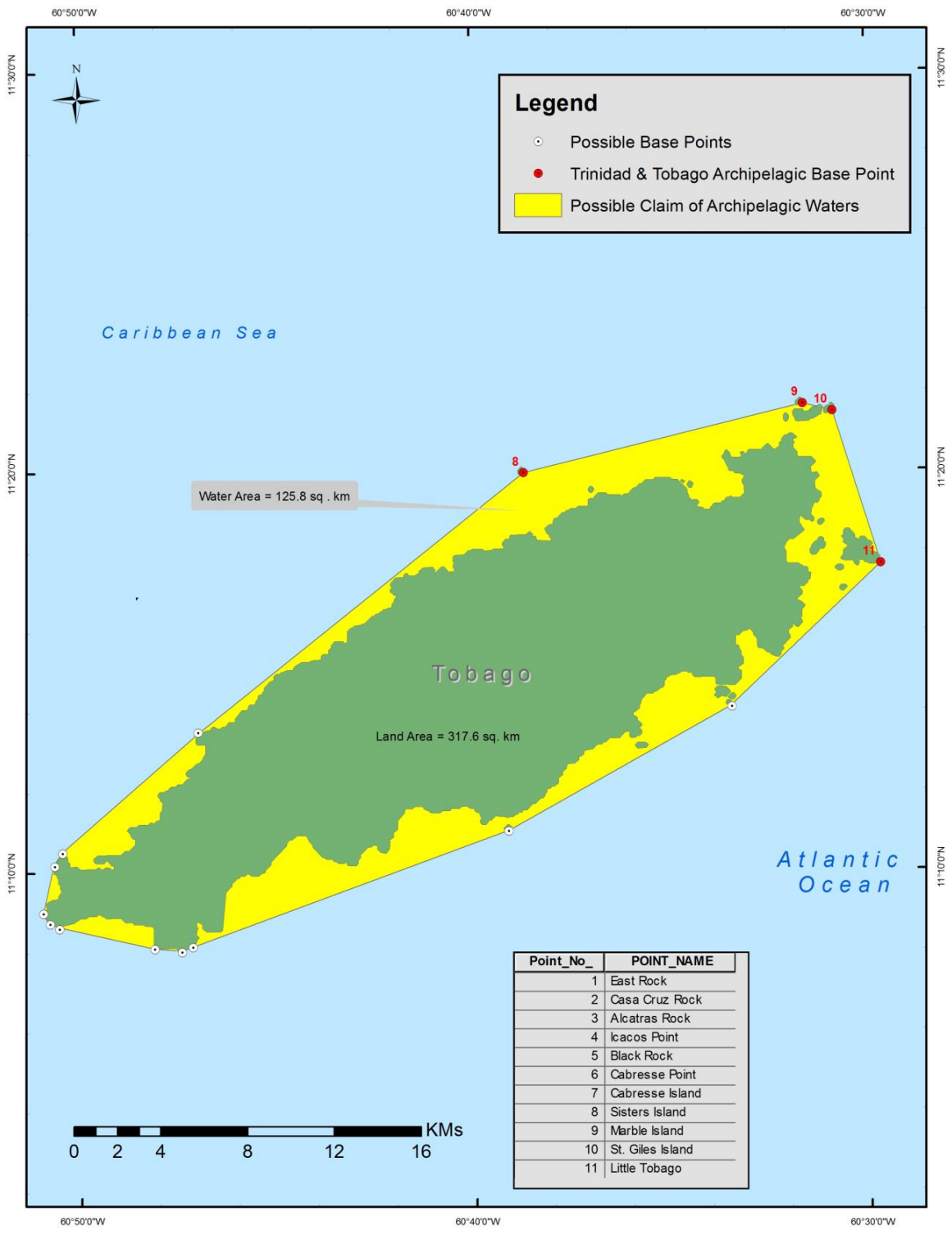
Gerald Thompson

Ambassador Extraordinary and Plenipotentiary (Ret.)

**25<sup>th</sup> January, 2018**







# APPENDIX 2

# Canada's Oceans Act

Last amended July 30, 2019





CANADA

CONSOLIDATION

CODIFICATION

## Oceans Act

## Loi sur les océans

S.C. 1996, c. 31

L.C. 1996, ch. 31

Current to April 20, 2021

À jour au 20 avril 2021

Last amended on July 30, 2019

Dernière modification le 30 juillet 2019

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<http://lois-laws.justice.gc.ca>

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## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (2) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### Published consolidation is evidence

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

### Inconsistencies in Acts

**(2)** In the event of an inconsistency between a consolidated statute published by the Minister under this Act and the original statute or a subsequent amendment as certified by the Clerk of the Parliaments under the *Publication of Statutes Act*, the original statute or amendment prevails to the extent of the inconsistency.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## NOTE

This consolidation is current to April 20, 2021. The last amendments came into force on July 30, 2019. Any amendments that were not in force as of April 20, 2021 are set out at the end of this document under the heading "Amendments Not in Force".

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (2) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### Codifications comme élément de preuve

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

### Incompatibilité – lois

**(2)** Les dispositions de la loi d'origine avec ses modifications subséquentes par le greffier des Parlements en vertu de la *Loi sur la publication des lois* l'emportent sur les dispositions incompatibles de la loi codifiée publiée par le ministre en vertu de la présente loi.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

Cette codification est à jour au 20 avril 2021. Les dernières modifications sont entrées en vigueur le 30 juillet 2019. Toutes modifications qui n'étaient pas en vigueur au 20 avril 2021 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».

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S.C. 1996, c. 31

L.C. 1996, ch. 31

## An Act respecting the oceans of Canada

## Loi concernant les océans du Canada

[Assented to 18th December 1996]

[Sanctionnée le 18 décembre 1996]

### Preamble

WHEREAS Canada recognizes that the three oceans, the Arctic, the Pacific and the Atlantic, are the common heritage of all Canadians;

WHEREAS Parliament wishes to reaffirm Canada's role as a world leader in oceans and marine resource management;

WHEREAS Parliament wishes to affirm in Canadian domestic law Canada's sovereign rights, jurisdiction and responsibilities in the exclusive economic zone of Canada;

WHEREAS Canada promotes the understanding of oceans, ocean processes, marine resources and marine ecosystems to foster the sustainable development of the oceans and their resources;

WHEREAS Canada holds that conservation, based on an ecosystem approach, is of fundamental importance to maintaining biological diversity and productivity in the marine environment;

WHEREAS Canada promotes the wide application of the precautionary approach to the conservation, management and exploitation of marine resources in order to protect these resources and preserve the marine environment;

WHEREAS Canada recognizes that the oceans and their resources offer significant opportunities for economic diversification and the generation of wealth for the benefit of all Canadians, and in particular for coastal communities;

WHEREAS Canada promotes the integrated management of oceans and marine resources;

AND WHEREAS the Minister of Fisheries and Oceans, in collaboration with other ministers, boards and

### Préambule

Attendu :

que le Canada reconnaît que les trois océans qui le bordent, l'Arctique, le Pacifique et l'Atlantique, font partie du patrimoine de tous les Canadiens;

que le Parlement désire réaffirmer le rôle du Canada en tant que chef de file mondial en matière de gestion des océans et des ressources marines;

que le Parlement désire affirmer, dans les lois internes, les droits souverains du Canada sur sa zone économique exclusive et les responsabilités qu'il compte assumer à cet égard;

que le Canada est déterminé à promouvoir la connaissance des océans, des phénomènes océaniques ainsi que des ressources et des écosystèmes marins, en vue d'assurer la préservation des océans et la durabilité de leurs ressources;

que le Canada estime que la conservation, selon la méthode des écosystèmes, présente une importance fondamentale pour la sauvegarde de la diversité biologique et de la productivité du milieu marin;

que le Canada encourage l'application du principe de la prévention relativement à la conservation, à la gestion et à l'exploitation des ressources marines afin de protéger ces ressources et de préserver l'environnement marin;

que le Canada reconnaît que les océans et les ressources marines offrent des possibilités importantes de diversification et de croissance économiques au profit de tous les Canadiens et, en particulier, des collectivités côtières;

que le Canada est déterminé à promouvoir la gestion intégrée des océans et des ressources marines;

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, is encouraging the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems;

NOW, THEREFORE, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

## Short Title

### Short title

1 This Act may be cited as the *Oceans Act*.

## Interpretation

### Definitions

2 In this Act,

**artificial island** means any man-made extension of the seabed or a seabed feature, whether or not the extension breaks the surface of the superjacent waters; (*île artificielle*)

**Department** means the Department of Fisheries and Oceans; (*ministère*)

**federal laws** includes Acts of Parliament, regulations as defined in subsection 2(1) of the *Interpretation Act* and any other rules of law within the jurisdiction of Parliament, but does not include laws of the Legislature of Yukon, of the Northwest Territories or for Nunavut; (*droit*)

**law**, in respect of a province, includes a law or rule of law from time to time in force in the province, other than federal laws, and the provisions of any instrument having effect under any such law; (*droit*)

**marine installation or structure** includes

(a) any ship and any anchor, anchor cable or rig pad used in connection therewith,

(b) any offshore drilling unit, production platform, subsea installation, pumping station, living accommodation, storage structure, loading or landing platform, dredge, floating crane, pipelaying or other barge or

que le ministre des Pêches et des Océans, en collaboration avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, encourage l'élaboration et la mise en œuvre d'une stratégie nationale de gestion des écosystèmes estuariens, côtiers et marins,

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

## Titre abrégé

### Titre abrégé

1 *Loi sur les océans*.

## Définitions et interprétation

### Définitions

2 Les définitions qui suivent s'appliquent à la présente loi.

**droit** Au sens objectif :

a) s'agissant du droit fédéral, les lois fédérales et les règlements au sens du paragraphe 2(1) de la *Loi d'interprétation* ainsi que les autres règles de droit qui relèvent de la compétence du Parlement. Sont toutefois exclues les lois de la Législature du Yukon, de la Législature des Territoires du Nord-Ouest ou de la Législature du Nunavut;

b) s'agissant du droit d'une province, les lois de celle-ci et les textes d'application en vigueur sous le régime de ces lois, ainsi que les autres règles de droit relevant de la compétence de la province et en vigueur dans celle-ci. (*lawfederal laws*)

**île artificielle** Toute adjonction d'origine humaine aux fonds marins ou à un élément de ces fonds, émergée ou immergée. (*artificial island*)

**ministère** Le ministère des Pêches et des Océans. (*Department*)

**ministre** Le ministre des Pêches et des Océans. (*Minister*)

**navire** Tout genre de navire, bateau, embarcation ou bâtiment conçu, utilisé ou utilisable, exclusivement ou



pipeline and any anchor, anchor cable or rig pad used in connection therewith, and

(c) any other work or work within a class of works prescribed pursuant to paragraph 26(1)(a); (*ouvrages en mer*)

**Minister** means the Minister of Fisheries and Oceans; (*ministre*)

**ship** includes any description of vessel, boat or craft designed, used or capable of being used solely or partly for marine navigation without regard to method or lack of propulsion. (*navire*)

1996, c. 31, s. 2; 1993, c. 28, s. 78; 1998, c. 15, s. 35; 2002, c. 7, s. 223; 2014, c. 2, s. 46.

## Saving

**2.1** For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from any existing aboriginal or treaty rights of the aboriginal peoples of Canada under section 35 of the *Constitution Act, 1982*.

## Her Majesty

### Her Majesty

**3** This Act is binding on Her Majesty in right of Canada or a province.

## PART I

# Canada's Maritime Zones

## Territorial Sea and Contiguous Zone

### Territorial sea of Canada

**4** The territorial sea of Canada consists of a belt of sea that has as its inner limit the baselines described in section 5 and as its outer limit

(a) subject to paragraph (b), the line every point of which is at a distance of 12 nautical miles from the nearest point of the baselines; or

(b) in respect of the portions of the territorial sea of Canada for which geographical coordinates of points

non, pour la navigation maritime, autopropulsé ou non et indépendamment de son mode de propulsion. (*ship*)

**ouvrages en mer** Sont compris parmi les ouvrages en mer :

a) les navires, ainsi que les ancres, câbles d'ancrage et assises de sonde utilisés à leur égard;

b) les unités de forage en mer, les stations de pompage, les plates-formes de chargement, de production ou d'atterrissage, les installations sous-marines, les unités de logement ou d'entreposage, les dragues, les grues flottantes, les barges, les unités d'installation de canalisations et les canalisations, ainsi que les ancres, câbles d'ancrage et assises de sonde utilisés à leur égard;

c) les autres ouvrages désignés — ou qui font partie d'une catégorie désignée — sous le régime de l'alinéa 26(1)a). (*marine installation or structure*)

1996, ch. 31, art. 2; 1993, ch. 28, art. 78; 1998, ch. 15, art. 35; 2002, ch. 7, art. 223; 2014, ch. 2, art. 46.

## Droits des peuples autochtones

**2.1** Il demeure entendu que la présente loi ne porte pas atteinte aux droits existants — ancestraux ou issus de traités — des peuples autochtones du Canada visés à l'article 35 de la *Loi constitutionnelle de 1982*.

## Sa Majesté

### Obligation de Sa Majesté

**3** La présente loi lie Sa Majesté du chef du Canada ou d'une province.

## PARTIE I

# Zones maritimes du Canada

## Mer territoriale et zone contiguë

### Mer territoriale du Canada

**4** La mer territoriale du Canada est la zone maritime comprise entre la ligne de base déterminée selon l'article 5 et :

a) soit la ligne dont chaque point est à une distance de 12 milles marins du point le plus proche de la ligne de base;

b) soit, pour toute partie de la mer territoriale ayant fait l'objet d'une liste de coordonnées géographiques

have been prescribed pursuant to subparagraph 25(a)(ii), lines determined from the geographical coordinates of points so prescribed.

#### Determination of the baselines

**5 (1)** Subject to subsections (2) and (3), the baseline is the low-water line along the coast or on a low-tide elevation that is situated wholly or partly at a distance not exceeding the breadth of the territorial sea of Canada from the mainland or an island.

#### Geographical coordinates of points

**(2)** In respect of any area for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(a)(i) and subject to any exceptions in the regulations for

**(a)** the use of the low-water line along the coast between given points, and

**(b)** the use of the low-water lines of low-tide elevations that are situated wholly or partly at a distance not exceeding the breadth of the territorial sea of Canada from the mainland or an island,

the baselines are straight lines interpreted as geodesics joining the consecutive geographical coordinates of points so prescribed.

#### Baselines where historic title

**(3)** In respect of any area not referred to in subsection (2), the baselines are the outer limits of any area, other than the territorial sea of Canada, over which Canada has a historic or other title of sovereignty.

#### Low-tide elevations

**(4)** For the purposes of this section, a low-tide elevation is a naturally formed area of land that is surrounded by and above water at low tide but submerged at high tide.

#### Internal waters of Canada

**6** The internal waters of Canada consist of the waters on the landward side of the baselines of the territorial sea of Canada.

#### Part of Canada

**7** For greater certainty, the internal waters of Canada and the territorial sea of Canada form part of Canada.

de points établie sous le régime du sous-alinéa 25a)(ii), les géodésiques reliant ces points.

#### Détermination de la ligne de base

**5 (1)** Sous réserve des paragraphes (2) et (3), la ligne de base est la laisse de basse mer soit du littoral, soit des hauts-fonds découvrants situés, en tout ou en partie, à une distance de la côte ou d'une île qui ne dépasse pas la largeur de la mer territoriale.

#### Coordonnées géographiques de points

**(2)** Dans les secteurs ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du sous-alinéa 25a)(i), la ligne de base est constituée des géodésiques joignant les différents points énumérés sur la liste, sous réserve des exceptions de celle-ci quant à la prise en compte de la laisse de basse mer soit du littoral, soit des hauts-fonds découvrants situés, en tout ou en partie, à une distance de la côte qui ne dépasse pas la largeur de la mer territoriale.

#### Ligne de base : souveraineté historique

**(3)** Dans le cas d'un espace maritime non compris dans la mer territoriale et non visé au paragraphe (2) sur lequel le Canada a un titre de souveraineté historique ou autre, la ligne de base est la limite extérieure de cet espace.

#### Définition de hauts-fonds découvrants

**(4)** Pour l'application du présent article, les hauts-fonds découvrants sont des élévations naturelles submergées à marée haute et découvertes à marée basse.

#### Eaux intérieures du Canada

**6** Les eaux intérieures du Canada sont les eaux situées en deçà de la ligne de base de la mer territoriale.

#### Territoire canadien

**7** Il est entendu que les eaux intérieures et la mer territoriale du Canada font partie du territoire de celui-ci.

### Rights of Her Majesty

**8 (1)** For greater certainty, in any area of the sea not within a province, the seabed and subsoil below the internal waters of Canada and the territorial sea of Canada are vested in Her Majesty in right of Canada.

### Saving

**(2)** Nothing in this section abrogates or derogates from any legal right or interest held before February 4, 1991.

### Application of provincial law

**9 (1)** Subject to this section and to any other Act of Parliament, the laws of a province apply in any area of the sea

- (a)** that forms part of the internal waters of Canada or the territorial sea of Canada;
- (b)** that is not within any province; and
- (c)** that is prescribed by the regulations.

### Limitation

**(2)** Subject to any regulations made pursuant to paragraph 26(1)(d), subsection (1) does not apply in respect of any provision of a law of a province that

- (a)** imposes a tax or royalty; or
- (b)** relates to mineral or other non-living natural resources.

### Interpretation

**(3)** For the purposes of this section, the laws of a province shall be applied as if the area of the sea in which those laws apply under this section were within the territory of that province.

### Sums due to province

**(4)** Any sum due under a law of a province that applies in an area of the sea under this section belongs to Her Majesty in right of the province.

### Limitation

**(5)** For greater certainty, this section shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any area of the sea in which a law of a province applies under this section or the living or non-living resources of that area, or as limiting the application of any federal laws.

### Droits de Sa Majesté

**8 (1)** Il est entendu que, dans le cas des espaces maritimes non compris dans le territoire d'une province, le fond et le sous-sol des eaux intérieures et de la mer territoriale appartiennent à Sa Majesté du chef du Canada.

### Réserve

**(2)** Le présent article n'a pas pour effet de porter atteinte aux droits acquis avant le 4 février 1991.

### Application du droit provincial

**9 (1)** Sous réserve des autres dispositions du présent article et de toute autre loi fédérale, le droit d'une province côtière s'applique aux espaces maritimes extracôtiers faisant partie des eaux intérieures ou de la mer territoriale qui ne sont compris dans le territoire d'aucune province et qui sont désignés par règlement.

### Restriction

**(2)** Sous réserve des règlements pris en vertu de l'alinéa 26(1)d), le paragraphe (1) ne s'applique pas aux règles du droit provincial qui, selon le cas :

- a)** imposent une taxe ou des redevances;
- b)** traitent des ressources minérales ou autres ressources naturelles non biologiques.

### Interprétation

**(3)** Dans les cas visés par le présent article, le droit provincial s'applique comme si l'espace visé était situé à l'intérieur de la province.

### Remise à la province

**(4)** Les sommes payables au titre d'une règle du droit provincial qui s'applique à l'espace visé au présent article appartiennent à Sa Majesté du chef de la province.

### Restriction

**(5)** Il demeure entendu que ni les provinces, ni quiconque en leur nom, ne peuvent se fonder sur le présent article pour prétendre à des droits ou à une compétence législative sur les espaces extracôtiers visés ou sur leurs ressources biologiques ou non biologiques; en outre, le présent article n'a pas pour effet de limiter l'application du droit fédéral.

### Contiguous zone of Canada

**10** The contiguous zone of Canada consists of an area of the sea that has as its inner limit the outer limit of the territorial sea of Canada and as its outer limit the line every point of which is at a distance of 24 nautical miles from the nearest point of the baselines of the territorial sea of Canada, but does not include an area of the sea that forms part of the territorial sea of another state or in which another state has sovereign rights.

### Prevention in contiguous zone of infringement of federal laws

**11** A person who is responsible for the enforcement of a federal law that is a customs, fiscal, immigration or sanitary law and who has reasonable grounds to believe that a person in the contiguous zone of Canada would, if that person were to enter Canada, commit an offence under that law may, subject to Canada's international obligations, prevent the entry of that person into Canada or the commission of the offence and, for greater certainty, section 25 of the *Criminal Code* applies in respect of the exercise by a person of any powers under this section.

### Enforcement in contiguous zone of federal laws

**12 (1)** Where there are reasonable grounds to believe that a person has committed an offence in Canada in respect of a federal law that is a customs, fiscal, immigration or sanitary law, every power of arrest, entry, search or seizure or other power that could be exercised in Canada in respect of that offence may also be exercised in the contiguous zone of Canada.

### Limitation

**(2)** A power of arrest referred to in subsection (1) shall not be exercised in the contiguous zone of Canada on board any ship registered outside Canada without the consent of the Attorney General of Canada.

## Exclusive Economic Zone

### Exclusive economic zone of Canada

**13 (1)** The exclusive economic zone of Canada consists of an area of the sea beyond and adjacent to the territorial sea of Canada that has as its inner limit the outer limit of the territorial sea of Canada and as its outer limit

(a) subject to paragraph (b), the line every point of which is at a distance of 200 nautical miles from the nearest point of the baselines of the territorial sea of Canada; or

### Zone contiguë du Canada

**10** La zone contiguë du Canada est la zone maritime comprise entre la limite extérieure de la mer territoriale et la ligne dont chaque point est à une distance de 24 milles marins du point le plus proche de la ligne de base de la mer territoriale, à l'exclusion de tout espace maritime faisant partie de la mer territoriale d'un autre État, ou assujetti aux droits souverains d'un autre État.

### Prévention des infractions

**11** Sous réserve des obligations internationales du Canada, tout agent chargé de l'application d'une règle du droit fédéral touchant les douanes, la fiscalité, l'immigration ou l'hygiène publique peut, s'il a des motifs raisonnables de croire qu'une personne se trouvant dans la zone contiguë du Canada serait, si elle entrait au Canada, en situation d'infraction à une telle règle de droit, empêcher cette personne d'entrer au Canada ou prévenir la perpétration de l'infraction. Il est entendu que l'article 25 du *Code criminel* s'applique à toute intervention pratiquée en vertu du présent article.

### Pouvoirs accessoires

**12 (1)** Lorsqu'il existe des motifs raisonnables de croire qu'une infraction à une règle du droit fédéral touchant les douanes, la fiscalité, l'immigration ou l'hygiène publique a été commise au Canada, tous les pouvoirs — notamment ceux d'arrestation, d'accès à des lieux, de perquisition, de fouille et de saisie — qui peuvent être exercés au Canada relativement à une telle infraction peuvent l'être également dans la zone contiguë.

### Réserve

**(2)** L'exercice du pouvoir d'arrestation dans la zone contiguë, à bord d'un navire immatriculé à l'étranger, est subordonné au consentement du procureur général du Canada.

## Zone économique exclusive

### Zone économique exclusive du Canada

**13 (1)** La zone économique exclusive est la zone maritime adjacente à la mer territoriale qui est comprise entre la limite extérieure de celle-ci et :

a) soit la ligne dont chaque point est à 200 milles marins du point le plus proche de la ligne de base de la mer territoriale;

b) soit, pour toute partie de la zone économique exclusive ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du

(b) in respect of a portion of the exclusive economic zone of Canada for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(a)(iii), lines determined from the geographical coordinates of points so prescribed.

#### Determination of the outer limit of the exclusive economic zone of Canada

(2) For greater certainty, paragraph (1)(a) applies regardless of whether regulations are made pursuant to subparagraph 25(a)(iv) prescribing geographical coordinates of points from which the outer limit of the exclusive economic zone of Canada may be determined.

#### Sovereign rights and jurisdiction of Canada

14 Canada has

(a) sovereign rights in the exclusive economic zone of Canada for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the exclusive economic zone of Canada, such as the production of energy from the water, currents and winds;

(b) jurisdiction in the exclusive economic zone of Canada with regard to

(i) the establishment and use of artificial islands, installations and structures,

(ii) marine scientific research, and

(iii) the protection and preservation of the marine environment; and

(c) other rights and duties in the exclusive economic zone of Canada provided for under international law.

#### Rights of Her Majesty

15 (1) For greater certainty, any rights of Canada in the seabed and subsoil of the exclusive economic zone of Canada and their resources are vested in Her Majesty in right of Canada.

#### Saving

(2) Nothing in this section abrogates or derogates from any legal right or interest held before February 4, 1991.

#### Fishing zones of Canada

16 The fishing zones of Canada consist of areas of the sea adjacent to the coast of Canada that are prescribed in the regulations.

sous-alinéa 25a)(iii), les géodésiques reliant ces points.

#### Précision

(2) Il est entendu que l'absence de règlement d'application du sous-alinéa 25a)(iv) n'a pas pour effet de restreindre la portée des droits que peut exercer le Canada au titre de l'alinéa (1)a).

#### Droits souverains du Canada

14 Le Canada a, sur sa zone économique exclusive :

a) des droits souverains quant à l'exploration et à l'exploitation, la conservation et la gestion des ressources naturelles — biologiques et non biologiques — de celle-ci, des fonds marins, de leur sous-sol et des eaux surjacentes, y compris toute activité liée à l'exploration et à l'exploitation de la zone à des fins économiques, telle la production d'énergie à partir de l'eau, des courants et des vents;

b) compétence pour la mise en place et l'utilisation d'îles artificielles et d'ouvrages en mer, à la recherche scientifique marine, ainsi qu'à la protection et la préservation du milieu marin;

c) les autres droits et obligations prévus par le droit international.

#### Droits de Sa Majesté

15 (1) Il est entendu que les droits du Canada sur le fond et le sous-sol de sa zone économique exclusive, ainsi que sur les ressources qui s'y trouvent, appartiennent à Sa Majesté du chef du Canada.

#### Réserve

(2) Le présent article n'a pas pour effet de porter atteinte aux droits acquis avant le 4 février 1991.

#### Zones de pêche du Canada

16 Les zones de pêche du Canada sont les zones maritimes adjacentes à la côte canadienne qui sont désignées comme telles par règlement.

## Continental Shelf

### Continental shelf of Canada

**17 (1)** The continental shelf of Canada is the seabed and subsoil of the submarine areas, including those of the exclusive economic zone of Canada, that extend beyond the territorial sea of Canada throughout the natural prolongation of the land territory of Canada

**(a)** subject to paragraphs (b) and (c), to the outer edge of the continental margin, determined in the manner under international law that results in the maximum extent of the continental shelf of Canada, the continental margin being the submerged prolongation of the land mass of Canada consisting of the seabed and subsoil of the shelf, the slope and the rise, but not including the deep ocean floor with its oceanic ridges or its subsoil;

**(b)** to a distance of 200 nautical miles from the baselines of the territorial sea of Canada where the outer edge of the continental margin does not extend up to that distance; or

**(c)** in respect of a portion of the continental shelf of Canada for which geographical coordinates of points have been prescribed pursuant to subparagraph 25(a)(iii), to lines determined from the geographical coordinates of points so prescribed.

### Determination of the outer limit of the continental shelf of Canada

**(2)** For greater certainty, paragraphs (1)(a) and (b) apply regardless of whether regulations are made pursuant to subparagraph 25(a)(iv) prescribing geographical coordinates of points from which the outer edge of the continental margin or other outer limit of the continental shelf of Canada may be determined.

1996, c. 31, s. 17; 2015, c. 3, s. 137(E).

### Sovereign rights of Canada

**18** Canada has sovereign rights over the continental shelf of Canada for the purpose of exploring it and exploiting the mineral and other non-living natural resources of the seabed and subsoil of the continental shelf of Canada, together with living organisms belonging to sedentary species, that is to say, organisms that, at the harvestable stage, either are immobile on or under the seabed of the continental shelf of Canada or are unable to move except in constant physical contact with the seabed or the subsoil of the continental shelf of Canada.

## Plateau continental

### Plateau continental du Canada

**17 (1)** Le plateau continental du Canada est constitué des fonds marins et de leur sous-sol — y compris ceux de la zone économique exclusive — qui s'étendent, au-delà de la mer territoriale, sur tout le prolongement naturel du territoire terrestre du Canada :

**a)** soit jusqu'au rebord externe de la marge continentale — la limite la plus éloignée que permet le droit international étant à retenir —, c'est-à-dire les fonds marins correspondant au plateau, au talus et au glacis, ainsi que leur sous-sol, qui constituent le prolongement immergé de la masse terrestre du Canada, à l'exclusion, toutefois, des grands fonds des océans, de leurs dorsales océaniques et de leur sous-sol;

**b)** soit jusqu'à 200 milles marins de la ligne de base de la mer territoriale, là où ce rebord se trouve à une distance inférieure;

**c)** soit, pour toute partie du plateau continental ayant fait l'objet d'une liste de coordonnées géographiques de points établie sous le régime du sous-alinéa 25a)(iii), jusqu'à la ligne constituée des géodésiques reliant ces points.

### Précision

**(2)** Il est entendu que l'absence de règlement d'application du sous-alinéa 25a)(iv) n'a pas pour effet de restreindre la portée des droits que peut exercer le Canada au titre des alinéas (1)a) et b).

1996, ch. 31, art. 17; 2015, ch. 3, art. 137(A).

### Droits souverains du Canada

**18** Les droits souverains du Canada sur son plateau continental s'étendent à l'exploration de celui-ci et à l'exploitation de ses ressources minérales et autres ressources naturelles non biologiques, ainsi que des organismes vivants qui appartiennent aux espèces sédentaires, c'est-à-dire les organismes qui, au stade où ils peuvent être pêchés, sont soit immobiles sur le fond ou au-dessous du fond, soit incapables de se déplacer autrement qu'en restant constamment en contact avec le fond ou le sous-sol.

### Rights of Her Majesty

**19 (1)** For greater certainty, any rights of Canada in the continental shelf of Canada are vested in Her Majesty in right of Canada.

### Saving

**(2)** Nothing in this section abrogates or derogates from any legal right or interest held before February 4, 1991.

### Application of federal laws — continental shelf installations

**20 (1)** Subject to any regulations made pursuant to paragraph 26(1)(j) or (k), federal laws apply

**(a)** on or under any marine installation or structure from the time it is attached or anchored to the continental shelf of Canada in connection with the exploration of that shelf or the exploitation of its mineral or other non-living resources until the marine installation or structure is removed from the waters above the continental shelf of Canada;

**(b)** on or under any artificial island constructed, erected or placed on the continental shelf of Canada; and

**(c)** within such safety zone surrounding any marine installation or structure or artificial island referred to in paragraph (a) or (b) as is determined by or pursuant to the regulations.

### Interpretation

**(2)** For the purposes of subsection (1), federal laws shall be applied

**(a)** as if the places referred to in that subsection formed part of the territory of Canada;

**(b)** notwithstanding that by their terms their application is limited to Canada; and

**(c)** in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

### Application of provincial law

**21 (1)** Subject to this section and to any other Act of Parliament, the laws of a province apply to the same extent as federal laws apply pursuant to section 20 in any area of the sea

**(a)** that forms part of the exclusive economic zone of Canada or is above the continental shelf of Canada;

### Droits de Sa Majesté

**19 (1)** Il est entendu que les droits du Canada sur son plateau continental appartiennent à Sa Majesté du chef du Canada.

### Réserve

**(2)** Le présent article n'a pas pour effet de porter atteinte aux droits acquis avant le 4 février 1991.

### Application du droit fédéral

**20 (1)** Sous réserve des règlements d'application des alinéas 26(1)(j) ou (k), le droit fédéral s'applique :

**a)** aux ouvrages en mer et sous ceux-ci, depuis le moment de leur fixation au plateau continental ou à son sous-sol, à l'occasion de l'exploration de celui-ci ou de l'exploitation de ses ressources minérales ou autres ressources naturelles non biologiques, jusqu'à ce qu'ils quittent les eaux surjacentes;

**b)** aux îles artificielles construites ou mises en place sur le plateau continental, ou sous celles-ci;

**c)** à l'intérieur de la zone de sécurité située autour des ouvrages et des îles mentionnés aux alinéas a) et b), et délimitée conformément aux règlements.

### Interprétation

**(2)** Pour l'application du paragraphe (1), les règles du droit fédéral s'appliquent :

**a)** comme si les lieux visés faisaient partie du territoire du Canada;

**b)** même si, selon leurs propres termes, elles ne s'appliquent qu'au Canada;

**c)** d'une façon compatible avec les droits et libertés que le droit international reconnaît aux autres États, notamment en matière de navigation et de survol.

### Application du droit provincial

**21 (1)** Sous réserve des autres dispositions du présent article et de toute autre loi fédérale, et dans la même mesure que le droit fédéral s'applique en vertu de l'article 20, le droit d'une province côtière s'applique à l'espace maritime extracôtier faisant partie de la zone économique exclusive ou situé au-dessus du plateau continental qui n'est compris dans le territoire d'aucune province et qui est désigné par règlement.

- (b) that is not within any province; and
- (c) that is prescribed by the regulations.

#### Limitation

(2) Subject to any regulations made pursuant to paragraph 26(1)(d), subsection (1) does not apply in respect of any provision of a law of a province that

- (a) imposes a tax or royalty; or
- (b) relates to mineral or other non-living natural resources.

#### Interpretation

(3) For the purposes of this section, the laws of a province shall be applied as if the area of the sea in which those laws apply under this section were within the territory of that province.

#### Sums due to province

(4) Any sum due under a law of a province that applies in an area of the sea under this section belongs to Her Majesty in right of the province.

#### Limitation

(5) For greater certainty, this section shall not be interpreted as providing a basis for any claim, by or on behalf of a province, in respect of any interest in or legislative jurisdiction over any area of the sea in which a law of a province applies under this section or the living or non-living resources of that area, or as limiting the application of any federal laws.

## Court Jurisdiction

#### Jurisdiction extended

22 (1) Subject to subsection (4) and to any regulations made pursuant to paragraph 26(1)(h), a court that would have jurisdiction in respect of any matter had the matter arisen in a province has jurisdiction in respect of any such matter involving a federal law that applies pursuant to this Act to the extent that the matter arises in whole or in part in any area of the sea that is not within any province and

- (a) that area of the sea is nearer to the coast of that province than to the coast of any other province; or
- (b) that province is prescribed by the regulations.

#### Jurisdiction extended — provincial laws

(2) Subject to any regulations made pursuant to paragraph 26(1)(h), a court that would have jurisdiction in

#### Restriction

(2) Sous réserve des règlements pris en vertu de l'alinéa 26(1)d), le paragraphe (1) ne s'applique pas aux règles du droit provincial qui, selon le cas :

- a) imposent une taxe ou des redevances;
- b) traitent des ressources minérales ou autres ressources naturelles non biologiques.

#### Interprétation

(3) Dans les cas visés par le présent article, le droit provincial s'applique comme si l'espace visé était situé à l'intérieur de la province.

#### Remise à la province

(4) Les sommes payables au titre d'une règle du droit provincial qui s'applique à l'espace visé au présent article appartiennent à Sa Majesté du chef de la province.

#### Restriction

(5) Il demeure entendu que ni les provinces, ni quiconque en leur nom, ne peuvent se fonder sur le présent article pour prétendre à des droits ou à une compétence législative sur les espaces extracôtiers visés ou sur leurs ressources biologiques ou non biologiques; en outre, le présent article n'a pas pour effet de limiter l'application du droit fédéral.

## Compétence juridictionnelle

#### Compétence extraterritoriale : droit fédéral

22 (1) Sous réserve du paragraphe (4) et des règlements d'application de l'alinéa 26(1)h), l'affaire mettant en jeu une règle du droit fédéral et survenue, en tout ou en partie, dans un espace maritime extracôtier qui n'est compris dans le territoire d'aucune province et où s'applique le droit fédéral en vertu de la présente loi ressortit aux tribunaux ayant compétence dans la province côtière la plus proche ou celle désignée par règlement, dans la mesure où ceux-ci auraient compétence si l'affaire était survenue dans cette province.

#### Compétence extraterritoriale : droit provincial

(2) Sous réserve des règlements d'application de l'alinéa 26(1)h), l'affaire mettant en jeu une règle du droit d'une



respect of any matter had the matter arisen in a province has jurisdiction in respect of any such matter involving a law of the province that applies pursuant to this Act to the extent that the matter arises in whole or in part in any area of the sea to which the law of that province applies pursuant to this Act.

#### Orders and powers

(3) A court referred to in subsection (1) or (2) may make any order or exercise any power it considers necessary in respect of any matter referred to in that subsection.

#### Criminal offences

(4) The jurisdiction and powers of courts with respect to offences under any federal law are determined pursuant to sections 477.3, 481.1 and 481.2 of the *Criminal Code*.

#### Saving

(5) Nothing in this section limits the jurisdiction that a court may exercise apart from this Act.

#### Definition of court

(6) In this section, **court** includes a judge of a court and a justice of the peace.

## Miscellaneous Provisions

#### Certificate — Minister of Foreign Affairs

**23 (1)** In any legal or other proceedings, a certificate issued by or under the authority of the Minister of Foreign Affairs containing a statement that any geographic location specified in the certificate was, at any time material to the proceedings,

- (a) in the internal waters of Canada,
- (b) in the territorial sea of Canada,
- (c) in the contiguous zone of Canada,
- (d) in the exclusive economic zone of Canada, or
- (e) in or above the continental shelf of Canada

is conclusive proof of the truth of the statement without proof of the signature or official character of the person appearing to have issued the certificate.

#### Certificate — Minister of Fisheries and Oceans

(2) In any legal or other proceedings, a certificate issued by or under the authority of the Minister containing a statement that any geographic location specified in the certificate was, at any time material to the proceedings,

province et survenue, en tout ou en partie, dans un espace maritime extracôtier auquel s'applique le droit de cette province en vertu de la présente loi ressortit aux tribunaux ayant compétence dans la province, dans la mesure où ils auraient compétence si l'affaire était survenue dans celle-ci.

#### Exercice des pouvoirs

(3) Les tribunaux visés aux paragraphes (1) ou (2) peuvent, dans le cadre des affaires dont ils sont saisis, exercer tous leurs pouvoirs selon qu'ils le jugent nécessaire.

#### Infractions au droit fédéral

(4) Leur compétence à l'égard des infractions au droit fédéral est déterminée conformément aux articles 477.3, 481.1 et 481.2 du *Code criminel*.

#### Réserve

(5) Le présent article n'a pas pour effet de restreindre la compétence qu'ils exercent par ailleurs.

#### Définition de tribunaux

(6) Pour l'application du présent article, sont assimilés aux tribunaux les juges qui y siègent et les juges de paix.

## Dispositions diverses

#### Certificat du ministre des Affaires étrangères

**23 (1)** Dans toute procédure, vaut preuve concluante des renseignements qui y sont énoncés le certificat délivré sous l'autorité du ministre des Affaires étrangères et attestant qu'un lieu se trouvait, à l'époque en cause :

- a) dans les eaux intérieures;
- b) dans la mer territoriale;
- c) dans la zone contiguë;
- d) dans la zone économique exclusive;
- e) sur le plateau continental ou dans les eaux surjacentes.

Le certificat est recevable en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

#### Certificat du ministre des Pêches et des Océans

(2) Dans toute procédure, vaut preuve concluante des renseignements qui y sont énoncés le certificat délivré sous l'autorité du ministre et attestant qu'un lieu se trouvait, à l'époque en cause, dans un espace maritime

within an area of the sea in which a law of the province named in the certificate applies under section 9 or 21 is conclusive proof of the truth of the statement without proof of the signature or official character of the person appearing to have issued the certificate.

#### **Certificate cannot be compelled**

**(3)** A certificate referred to in subsection (1) or (2) is admissible in evidence in proceedings referred to in that subsection, but its production cannot be compelled.

#### **Saving**

**24** Nothing in this Part limits the operation that any Act, rule of law or instrument has apart from this Part.

## Regulations

#### **Recommendation — Minister of Foreign Affairs**

**25** The Governor in Council may, on the recommendation of the Minister of Foreign Affairs, make regulations

**(a)** prescribing geographical coordinates of points from which

**(i)** baselines may be determined under subsection 5(2) as straight lines interpreted as geodesics,

**(ii)** in respect of a portion of the territorial sea of Canada prescribed in the regulations, an outer limit line may be determined, where, in the opinion of the Governor in Council, a portion of the territorial sea of Canada determined in accordance with paragraph 4(a) would conflict with the territorial sea of another state or other area of the sea in which another state has sovereign rights or would be unreasonably close to the coast of another state,

**(iii)** in respect of a portion of the exclusive economic zone of Canada or the continental shelf of Canada prescribed in the regulations, an outer limit line may be determined, where, in the opinion of the Governor in Council, a portion of the exclusive economic zone of Canada or the continental shelf of Canada determined in accordance with paragraph 13(1)(a) or 17(1)(a) or (b) would conflict with the territorial sea of another state or other area of the sea in which another state has sovereign rights or would be unreasonably close to the coast of another state or is otherwise inappropriate, and

**(iv)** the outer limit of the exclusive economic zone of Canada or the outer edge of the continental margin or other outer limit of the continental shelf of Canada may be determined; and

extracôtier où le droit de la province désignée dans le certificat s'appliquait en vertu des articles 9 ou 21. Le certificat est recevable en preuve sans qu'il soit nécessaire de prouver l'authenticité de la signature ou la qualité officielle du signataire.

#### **Non-exigibilité des certificats**

**(3)** La production des certificats visés aux paragraphes (1) et (2) n'est pas susceptible de contrainte.

#### **Réserve**

**24** Les dispositions de la présente partie n'ont pas pour effet de limiter l'applicabilité que des lois, des règles de droit ou des actes juridiques peuvent avoir par ailleurs.

## Règlements

#### **Recommandation du ministre des Affaires étrangères**

**25** Le gouverneur en conseil peut, sur la recommandation du ministre des Affaires étrangères, prendre des règlements :

**a)** pour fixer les coordonnées géographiques de points permettant de déterminer :

**(i)** les géodésiques constituant, aux termes du paragraphe 5(2), la ligne de base de la mer territoriale,

**(ii)** la limite extérieure de la mer territoriale dans les secteurs désignés par règlement où il estime que l'application de l'alinéa 4a) entraînerait un empiètement sur la mer territoriale d'un autre État ou sur un espace maritime assujéti aux droits souverains d'un autre État, ou placerait cette limite à un endroit trop proche du littoral d'un autre État,

**(iii)** la limite extérieure de la zone économique exclusive ou du plateau continental dans les secteurs désignés par règlement où il estime que l'application des alinéas 13(1)a) ou 17(1)a) ou b) entraînerait un empiètement sur la mer territoriale d'un autre État ou sur un espace maritime assujéti aux droits souverains d'un autre État, placerait la limite à un endroit trop proche du littoral d'un autre État ou serait inopportune pour quelque autre raison,

**(iv)** la limite extérieure de la zone économique exclusive, ou celle du plateau continental, notamment le rebord externe de la marge continentale;

**b)** pour constituer en zone de pêche tout espace maritime adjacent à la côte du Canada.

(b) prescribing areas of the sea adjacent to the coast of Canada as fishing zones of Canada.

#### Recommendation — Minister of Justice

**26 (1)** The Governor in Council may, on the recommendation of the Minister of Justice, make regulations

(a) prescribing a work or a class of works for the purpose of the definition *marine installation or structure* in section 2;

(b) making any law of a province applicable in respect of any part of the area of the sea in which laws of the province apply under section 9 or 21, even though the law, by its own terms, is applicable only in respect of a particular area within the province;

(c) restricting the application of subsection 9(1) or 21(1) to such laws of a province as are specified in the regulations;

(d) making subsection 9(1) or 21(1) applicable, on the terms and conditions, if any, specified in the regulations, in respect of any laws of a province that impose a tax or royalty or relate to mineral or other non-living natural resources;

(e) excluding any law of a province from the application of subsection 9(1) or 21(1);

(f) determining or prescribing the method of determining the safety zone referred to in paragraph 20(1)(c);

(g) prescribing an area of the sea and a province for the purposes of subsection 9(1), 21(1) or 22(1);

(h) restricting the application of subsection 22(1), (2) or (3) to courts of a district or territorial division of a province;

(i) prescribing, in respect of any area of the sea and for the purpose of subsection 22(1), the manner of determining the province that has the coast nearest to that area;

(j) excluding any federal laws or laws of a province or any of their provisions from the application of subsection 20(1) or 21(1), as the case may be, in respect of any area in or above the continental shelf of Canada or in respect of any specified activity in any such area; and

(k) making federal laws or laws of a province or any of their provisions applicable, in such circumstances as are specified in the regulations,

#### Recommandation du ministre de la Justice

**26 (1)** Le gouverneur en conseil peut, sur la recommandation du ministre de la Justice, prendre des règlements pour :

a) désigner des ouvrages ou catégories d'ouvrages pour l'application de la définition de *ouvrages en mer*, à l'article 2;

b) étendre l'application d'une règle du droit provincial à tout espace maritime extracôtier où le droit de la province en cause s'applique en vertu des articles 9 ou 21, même si cette règle, selon ses propres termes, n'est applicable qu'à une partie du territoire de la province;

c) restreindre l'application des paragraphes 9(1) ou 21(1) à telle règle du droit de la province visée;

d) rendre les paragraphes 9(1) ou 21(1) applicables, en conformité avec les conditions spécifiées dans le règlement, à toute règle du droit provincial imposant une taxe ou des redevances ou traitant des ressources minérales ou autres ressources naturelles non biologiques;

e) exclure toute règle du droit provincial de l'application des paragraphes 9(1) ou 21(1);

f) délimiter ou prescrire le mode de délimitation de la zone de sécurité visée à l'alinéa 20(1)c);

g) désigner tout espace maritime extracôtier pour l'application des paragraphes 9(1), 21(1) ou 22(1);

h) restreindre l'application des paragraphes 22(1), (2) ou (3) aux tribunaux de telle circonscription ou autre division territoriale de la province;

i) prévoir, pour l'application du paragraphe 22(1), la façon de déterminer la province côtière la plus proche d'un espace maritime donné;

j) exclure une règle du droit fédéral ou provincial de l'application des paragraphes 20(1) ou 21(1), selon le cas, à l'égard de tout ou partie du plateau continental ou des eaux surjacentes, ou à l'égard de certaines activités déterminées;

k) rendre une règle du droit fédéral ou provincial applicable, dans les circonstances spécifiées, à tout ou partie, selon le cas :

(i) de la zone économique exclusive,

(i) in the exclusive economic zone of Canada or in a portion of that zone,

(ii) in or above the continental shelf of Canada or a portion of that shelf, or

(iii) in any area beyond the continental shelf of Canada, where that application is made pursuant to an international agreement or arrangement entered into by Canada.

#### Restriction

(2) A regulation made pursuant to subsection (1) in relation to a law of a province may be restricted to a specific area or place or to a specific provision of the law.

#### Interpretation

(3) For the purposes of paragraphs (1)(j) and (k), federal laws and the laws of a province shall be applied

(a) as if the places referred to in any regulations made pursuant to either of those paragraphs formed part of the territory of Canada;

(b) notwithstanding that by their terms their application is limited to Canada or a province; and

(c) in a manner that is consistent with the rights and freedoms of other states under international law and, in particular, with the rights and freedoms of other states in relation to navigation and overflight.

#### Publication of proposed regulations

27 (1) A copy of each regulation that the Governor in Council proposes to make pursuant to paragraph 25(b) or section 26 shall be published in the *Canada Gazette* at least 60 days before its proposed effective date, and a reasonable opportunity shall be given to interested persons and provinces to make representations with respect to the proposed regulation.

#### Exception

(2) No proposed regulation that has been published pursuant to this section need again be published under this section, whether or not it has been altered.

(ii) du plateau continental ou des eaux surjacentes,

(iii) des espaces maritimes situés au-delà du plateau continental et faisant l'objet d'une entente ou d'un accord international conclu par le Canada.

#### Précision

(2) Le règlement pris en vertu du paragraphe (1) peut ne s'appliquer qu'à un endroit ou à un espace déterminé, ou ne viser que telle règle du droit provincial.

#### Interprétation

(3) Pour l'application des alinéas (1)j) et k), les règles du droit fédéral ou provincial visées s'appliquent :

a) comme si les lieux visés faisaient partie du territoire du Canada;

b) même si, selon leurs propres termes, elles ne s'appliquent qu'au Canada ou à la province, selon le cas;

c) d'une façon compatible avec les droits et libertés que le droit international reconnaît aux autres États, notamment en matière de navigation et de survol.

#### Publication

27 (1) Le projet de règlement d'application de l'alinéa 25b) ou de l'article 26 est publié dans la *Gazette du Canada* au moins soixante jours avant la date envisagée pour sa prise d'effet, les intéressés — notamment les provinces — se voyant accorder la possibilité de présenter leurs observations.

#### Dispense

(2) Il n'est pas nécessaire de publier de nouveau le projet de règlement même s'il a été modifié.

## PART II

# Oceans Management Strategy

## Application

### Part does not apply to inland waters

**28** For greater certainty, this Part does not apply in respect of rivers and lakes.

## National Strategy

### Development and implementation of strategy

**29** The Minister, in collaboration 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, shall lead and facilitate the development and implementation of a national strategy for the management of estuarine, coastal and marine ecosystems in waters that form part of Canada or in which Canada has sovereign rights under international law.

### Principles of strategy

**30** The national strategy will be based on the principles of

- (a) sustainable development, that is, development that meets the needs of the present without compromising the ability of future generations to meet their own needs;
- (b) the integrated management of activities in estuaries, coastal waters and marine waters that form part of Canada or in which Canada has sovereign rights under international law; and
- (c) the precautionary approach, that is, erring on the side of caution.

### Integrated management plans

**31** The Minister, in collaboration 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, shall lead and facilitate the development and implementation of plans for the integrated management of all activities or measures in or affecting estuaries, coastal waters and marine waters that

## PARTIE II

# Stratégie de gestion des océans

## Application

### Eaux internes

**28** Il est entendu que la présente partie ne s'applique pas aux lacs, fleuves et rivières.

## Stratégie nationale

### Élaboration et mise en œuvre

**29** Le ministre, en collaboration avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, dirige et favorise l'élaboration et la mise en œuvre d'une stratégie nationale de gestion des écosystèmes estuariens, côtiers et marins des eaux faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains.

### Principes directeurs

**30** La stratégie nationale repose sur les principes suivants :

- a) le développement durable, c'est-à-dire le développement qui permet de répondre aux besoins actuels sans compromettre la possibilité pour les générations futures de satisfaire les leurs;
- b) la gestion intégrée des activités qui s'exercent dans les estuaires et les eaux côtières et marines faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains;
- c) la prévention, c'est-à-dire pêcher par excès de prudence.

### Plans de gestion intégrée

**31** Le ministre, en collaboration avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, dirige et favorise l'élaboration et la mise en œuvre de plans pour la gestion intégrée de toutes les activités ou mesures qui s'exercent ou qui ont un effet dans les estuaires et les eaux côtières et marines faisant partie du

form part of Canada or in which Canada has sovereign rights under international law.

### Implementation of integrated management plans

**32** For the purpose of the implementation of integrated management plans, the Minister

(a) shall develop and implement policies and programs with respect to matters assigned by law to the Minister;

(b) shall coordinate with other ministers, boards and agencies of the Government of Canada the implementation of policies and programs of the Government with respect to all activities or measures in or affecting coastal waters and marine waters;

(c) may, on his or her own or jointly with another person or body or with another minister, board or agency of the Government of Canada, and taking into consideration the views of other ministers, boards and agencies of the Government of Canada, provincial and territorial governments and affected aboriginal organizations, coastal communities and other persons and bodies, including those bodies established under land claims agreements,

(i) establish advisory or management bodies and appoint or designate, as appropriate, members of those bodies, and

(ii) recognize established advisory or management bodies; and

(d) may, in consultation 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, establish marine environmental quality guidelines, objectives and criteria respecting estuaries, coastal waters and marine waters.

### Cooperation and agreements

**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;

Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains.

### Mise en œuvre des plans de gestion intégrée

**32** En vue de la mise en œuvre des plans de gestion intégrée, le ministre :

a) élabore et met en œuvre des orientations, des objectifs et des programmes dans les domaines de compétence qui lui sont attribués de droit;

b) recommande et coordonne, avec d'autres ministres ou organismes fédéraux, la mise en œuvre d'autres orientations, objectifs et programmes du gouvernement fédéral, relativement aux activités ou mesures touchant les eaux côtières ou marines;

c) peut, de sa propre initiative ou conjointement avec d'autres ministres ou organismes fédéraux ou d'autres personnes de droit public ou de droit privé, et après avoir pris en considération le point de vue d'autres ministres et organismes fédéraux, des gouvernements provinciaux et territoriaux et des organisations autochtones, des collectivités côtières et des autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, constituer des organismes de consultation ou de gestion et, selon le cas, y nommer ou désigner des membres, ou mandater des organismes existants à cet égard;

d) peut, en consultation avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales, établir des directives, des objectifs et des critères concernant la qualité du milieu dans les estuaires et les eaux côtières et marines.

### Coopération et accords

**33 (1)** Dans l'exercice des attributions qui lui sont conférées par la présente loi, le ministre :

a) coopère avec d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales;

**(b)** may enter into agreements with any person or body or with another minister, board or agency of the Government of Canada;

**(c)** shall gather, compile, analyse, coordinate and disseminate information;

**(d)** may make grants and contributions on terms and conditions approved by the Treasury Board; and

**(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.

### Consultation

**(2)** In exercising the powers and performing the duties and functions mentioned in this Part, the Minister may consult 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.

### Logistics support, etc.

**34** The Minister may coordinate logistics support and provide related assistance for the purposes of advancing scientific knowledge of estuarine, coastal and marine ecosystems.

## Designation of Marine Protected Areas

### Marine protected areas

**35 (1)** A marine protected area is an area of the sea that forms part of the internal waters of Canada, the territorial sea of Canada or the exclusive economic zone of Canada and has been designated under this section or section 35.1 for special protection for one or more of the following reasons:

**(a)** the conservation and protection of commercial and non-commercial fishery resources, including marine mammals, and their habitats;

**(b)** the conservation and protection of endangered or threatened marine species, and their habitats;

**(c)** the conservation and protection of unique habitats;

**(d)** the conservation and protection of marine areas of high biodiversity or biological productivity;

**b)** peut conclure des accords avec d'autres ministres ou toute personne de droit public ou de droit privé;

**c)** recueille, dépouille, analyse, coordonne et diffuse de l'information;

**d)** peut accorder des subventions ou contributions suivant les modalités approuvées par le Conseil du Trésor;

**e)** peut, à la demande d'autres ministres fédéraux ou de personnes de droit public — fédérales ou provinciales — ou de droit privé, engager des dépenses pour leur compte et recouvrer les sommes ainsi exposées.

### Consultation

**(2)** Dans l'exercice des attributions prévues par la présente partie, le ministre peut consulter d'autres ministres et organismes fédéraux, les gouvernements provinciaux et territoriaux et les organisations autochtones, les collectivités côtières et les autres personnes de droit public et de droit privé intéressées, y compris celles constituées dans le cadre d'accords sur des revendications territoriales.

### Soutien logistique

**34** Le ministre peut prendre en charge la coordination du soutien logistique d'activités visant à faire progresser la connaissance scientifique des écosystèmes estuariens, côtiers et marins.

## Désignation de zones de protection marine

### Zones de protection marine

**35 (1)** Une zone de protection marine est un espace maritime qui fait partie des eaux intérieures, de la mer territoriale ou de la zone économique exclusive du Canada et qui a été désigné en application du présent article ou de l'article 35.1 en vue d'une protection particulière pour l'une ou plusieurs des raisons suivantes :

**a)** la conservation et la protection des ressources halieutiques, commerciales ou autres, y compris les mammifères marins, et de leur habitat;

**b)** la conservation et la protection des espèces en voie de disparition et des espèces menacées, et de leur habitat;

**c)** la conservation et la protection d'habitats uniques;

**d)** la conservation et la protection d'espaces marins riches en biodiversité ou en productivité biologique;

(e) the conservation and protection of any other marine resource or habitat as is necessary to fulfil the mandate of the Minister; and

(f) the conservation and protection of marine areas for the purpose of maintaining ecological integrity.

#### Definition of *ecological integrity*

(1.1) For the purpose of paragraph (1)(f), **ecological integrity** means a condition in which

(a) the structure, composition and function of ecosystems are undisturbed by any human activity;

(b) natural ecological processes are intact and self-sustaining;

(c) ecosystems evolve naturally; and

(d) an ecosystem's capacity for self-renewal and its biodiversity are maintained.

#### Network of marine protected areas

(2) For the purposes of integrated management plans referred to in sections 31 and 32, the Minister shall lead and coordinate the development and implementation of a national network of marine protected areas on behalf of the Government of Canada.

#### Performance of duties and functions

(2.1) In performing his or her duties and functions under subsection (2), the Minister shall ensure that:

(a) clearly identified objectives are set with regard to each marine protected area; and

(b) the network of marine protected areas covers diverse habitat types, biogeographic regions and environmental conditions.

#### Regulations

(3) The Governor in Council, on the recommendation of the Minister, may make regulations

(a) designating marine protected areas;

(b) delineating zones within marine protected areas;

(c) prohibiting classes of activities within marine protected areas; and

(d) respecting any other matter consistent with the purpose of the designation.

1996, ch. 31, art. 35; 2019, c. 8, s. 4.

(e) la conservation et la protection d'autres ressources ou habitats marins, pour la réalisation du mandat du ministre;

(f) la conservation et la protection d'espaces marins en vue du maintien de l'intégrité écologique.

#### Définition de *intégrité écologique*

(1.1) Pour l'application de l'alinéa (1)f), **intégrité écologique** s'entend de l'état d'un espace maritime dont :

(a) la structure, la composition et la fonction des écosystèmes ne sont pas perturbées par l'activité humaine;

(b) les processus écologiques naturels sont intacts et autonomes;

(c) les écosystèmes évoluent naturellement;

(d) la capacité d'autorégénération des écosystèmes et leur biodiversité sont maintenues.

#### Réseau d'aires marines protégées

(2) Pour la planification de la gestion intégrée mentionnée aux articles 31 et 32, le ministre dirige et coordonne l'élaboration et la mise en œuvre d'un réseau national d'aires marines protégées au nom du gouvernement du Canada.

#### Exercice des attributions

(2.1) Dans l'exercice des attributions qui lui sont conférées par le paragraphe (2), le ministre s'assure de ce qui suit :

(a) des objectifs clairs sont établis pour chaque aire marine protégée;

(b) le réseau d'aires marines protégées couvre divers types d'habitat, aires biogéographiques et milieux.

#### Règlements

(3) Sur la recommandation du ministre, le gouverneur en conseil peut, par règlement :

(a) désigner des zones de protection marine;

(b) délimiter des zones dans des zones de protection marine;

(c) interdire l'exercice de catégories d'activités dans des zones de protection marine;

(d) prendre toute autre mesure compatible avec l'objet de la désignation.

1996, ch. 31, art. 35; 2019, ch. 8, art. 4.



## Definitions

**35.1 (1)** The following definitions apply in this section.

**foreign national** has the same meaning as in subsection 2(1) of the *Immigration and Refugee Protection Act*. (*étranger*)

**foreign ship** means a ship that is a *foreign vessel*, as defined in section 2 of the *Canada Shipping Act, 2001*. (*navire étranger*)

**ongoing** means, with respect to an activity in the area of the sea that is designated by an order made under subsection (2) as a marine protected area, that the activity

(a) was lawfully carried out in the year immediately before the day on which the order comes into force and does not require an authorization, including a permit or licence, under any applicable federal laws or laws of a province;

(b) was lawfully carried out in the year immediately before the day on which the order comes into force and was authorized, including by a permit or licence, under any applicable federal laws or laws of a province; or

(c) was not carried out before the day on which the order comes into force, but was authorized and continues to be authorized, including by a permit or licence, under any applicable federal laws or laws of a province. (*en cours*)

## Designation of marine protected area — Minister's order

(2) 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 and, in that order, the Minister

(a) shall list the classes of activities that are ongoing activities in the marine protected area;

(b) shall prohibit, in the marine protected area, any activity that is not part of a class of activities set out in paragraph (a) and that disturbs, damages, destroys or removes from that marine protected area any unique geological or archeological features or any living marine organism or any part of its habitat or is likely to do so;

(c) may prohibit, in the marine protected area, any activity that is part of a class of activities set out in

## Définitions

**35.1 (1)** Les définitions qui suivent s'appliquent au présent article.

**en cours** Se dit de l'activité qui, dans l'espace maritime désigné par arrêté pris en vertu du paragraphe (2) comme zone de protection marine, selon le cas :

a) a été exercée légalement dans l'année précédant la date d'entrée en vigueur de l'arrêté et ne requiert pas, pour son exercice, la délivrance d'une autorisation — notamment d'un permis ou d'une licence — en vertu du droit fédéral ou provincial applicable;

b) a été exercée légalement dans l'année précédant la date d'entrée en vigueur de l'arrêté et était autorisée — notamment au titre d'un permis ou d'une licence — en vertu du droit fédéral ou provincial applicable;

c) n'a pas encore été exercée à la date d'entrée en vigueur de l'arrêté, même si elle était autorisée, et l'est toujours, — notamment au titre d'un permis ou d'une licence — en vertu du droit fédéral ou provincial applicable. (*ongoing*)

**étranger** S'entend au sens du paragraphe 2(1) de la *Loi sur l'immigration et protection des réfugiés*. (*foreign national*)

**navire étranger** S'entend d'un navire qui est un *bâtiment étranger* au sens de l'article 2 de la *Loi de 2001 sur la marine marchande du Canada*. (*foreign ship*)

## Désignation d'une zone de protection marine par arrêté

(2) Le ministre peut, par arrêté, désigner une zone de protection marine dans tout espace maritime qui n'est pas désigné comme zone de protection marine en vertu de l'alinéa 35(3)a), d'une manière qui n'est pas incompatible avec quelque accord sur des revendications territoriales mis en vigueur et ratifié ou déclaré valide par une loi fédérale, et, dans l'arrêté, il :

a) énumère les catégories d'activités qui sont en cours dans la zone de protection marine;

b) interdit, dans la zone de protection marine, l'exercice de toute activité qui ne fait pas partie d'une catégorie d'activités visée à l'alinéa a) et qui perturbe, endommage, détruit ou retire de cette zone de protection marine toute caractéristique géologique ou archéologique unique, tout organisme marin vivant ou toute partie de son habitat, ou qui est susceptible de le faire;

c) peut interdire, dans la zone de protection marine, l'exercice de toute activité qui fait partie d'une

paragraph (a) and that is governed by an Act of Parliament under which the Minister is responsible for the management, conservation or protection of fisheries resources; and

(d) may exempt from the prohibition in paragraph (b) or (c), subject to any conditions that the Minister considers appropriate, any activity referred to in those paragraphs in the marine protected area by a foreign national, an entity incorporated or formed by or under the laws of a country other than Canada, a foreign ship or a foreign state.

### Exceptions

(3) The prohibitions set out in an order made under subsection (2) do not apply to the following activities:

(a) activities that are carried out in response to an emergency situation or that are carried out by or on behalf of Her Majesty for the purpose of public safety, national defence, national security or law enforcement; and

(b) marine scientific research activities that are consistent with the purpose of the designation of the marine protected area and that are authorized under federal laws or laws of a province, if required to be so authorized.

### Publication of report

(4) If an order is made under subsection (2), the Minister shall publish, in any manner that the Minister considers appropriate, a report

(a) indicating the area of the sea designated in the order;

(b) summarizing the consultations undertaken prior to making the order; and

(c) summarizing the information that the Minister considered when making the order, which may include environmental, social, cultural or economic information.

2019, c. 8, s. 5.

### Powers, duties and functions

**35.2** The Governor in Council and the Minister shall not use lack of scientific certainty regarding the risks posed by any activity that may be carried out in certain areas of the sea 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).

2019, c. 8, s. 5.

catégorie d'activités visée à l'alinéa a) et qui est régie par une loi fédérale en vertu de laquelle il est responsable de la gestion, de la conservation ou de la protection des ressources halieutiques;

d) peut exempter, aux conditions qu'il estime indiquées, l'exercice de toute activité — par un étranger, une entité qui est constituée en personne morale ou formée sous le régime de la législation d'un pays étranger, un navire étranger ou un État étranger — dans la zone de protection marine de l'application d'une interdiction prévue aux alinéas b) ou c).

### Exceptions

(3) Les interdictions prévues dans l'arrêté ne s'appliquent pas aux activités suivantes :

a) les activités qui sont exercées en réaction à une situation d'urgence ou qui sont exercées par Sa Majesté ou en son nom pour assurer la sécurité publique, la défense ou la sécurité nationales ou l'exécution de la loi;

b) la recherche scientifique marine qui est compatible avec l'objet de la désignation de la zone de protection marine et qui, si le droit fédéral ou provincial l'exige, est autorisée en vertu de celui-ci.

### Publication d'un rapport

(4) S'il prend un arrêté au titre du paragraphe (2), le ministre publie, de toute façon qu'il estime indiquée, un rapport :

a) précisant l'espace maritime désigné par l'arrêté;

b) résumant les consultations menées avant la prise de l'arrêté;

c) résumant les renseignements, qui peuvent notamment être de nature environnementale, sociale, culturelle ou économique, dont il a tenu compte pour la prise de l'arrêté.

2019, ch. 8, art. 5.

### Exercice des attributions

**35.2** Le gouverneur en conseil et le ministre ne peuvent utiliser l'absence de certitude scientifique concernant les risques que peut présenter l'exercice d'activités dans certains espaces maritimes comme prétexte pour remettre à plus tard l'exercice des attributions qui leur sont conférées par les paragraphes 35(3) ou 35.1(2) ou ne pas les exercer.

2019, ch. 8, art. 5.

### Recommendation of Minister

**35.3 (1)** The Minister shall, not later than the fifth anniversary of the day on which an order under subsection 35.1(2) comes into force,

(a) recommend to the Governor in Council that the Governor in Council make a regulation under subsection 35(3) to designate a marine protected area covering at least part of the area of the sea that is designated by the order made under subsection 35.1(2); or

(b) repeal the order.

### Repeal of Minister's order

**(2)** The Governor in Council may repeal the order if the Governor in Council makes a regulation referred to in paragraph (1)(a).

2019, c. 8, s. 5.

### Interim marine protected areas in emergency situations

**36 (1)** The Governor in Council, on the recommendation of the Minister, may make orders exercising any power under section 35 on an emergency basis, where the Minister is of the opinion that a marine resource or habitat is or is likely to be at risk to the extent that such orders are not inconsistent with a land claims agreement that has been given effect and has been ratified or approved by an Act of Parliament.

### Exemption from *Statutory Instruments Act*

**(2)** An order made under this section is exempt from the application of sections 3, 5 and 11 of the *Statutory Instruments Act*.

### Temporary effect

**(3)** An order made under this section that is not repealed ceases to have effect 90 days after it is made.

### Inconsistency

**(4)** In the event of any inconsistency between an order made under subsection (1) and an order made under subsection 35.1(2), the order made under subsection (1) prevails to the extent of the inconsistency.

1996, ch. 31, art. 36; 2019, c. 8, s. 6.

**37** [Repealed, 2019, c. 8, s. 7]

**38** [Repealed, 2019, c. 8, s. 7]

### Recommandation du ministre

**35.3 (1)** Au plus tard au cinquième anniversaire de l'entrée en vigueur d'un arrêté pris au titre du paragraphe 35.1(2), le ministre :

a) soit recommande au gouverneur en conseil de désigner, par règlement pris en vertu du paragraphe 35(3), une zone de protection marine couvrant au moins une partie de l'espace maritime désigné dans l'arrêté au titre du paragraphe 35.1(2);

b) soit abroge l'arrêté.

### Abrogation de l'arrêté

**(2)** Le gouverneur en conseil peut abroger l'arrêté s'il prend un règlement visé à l'alinéa (1)a).

2019, ch. 8, art. 5.

### Situations d'urgence

**36 (1)** Sur la recommandation du ministre, le gouverneur en conseil peut exercer par décret les pouvoirs que lui confère l'article 35 lorsqu'il estime qu'une ressource ou un habitat marins sont menacés ou risquent de l'être dans la mesure où le décret n'est pas incompatible avec quelque accord sur des revendications territoriales ratifié, mis en vigueur et déclaré valide par une loi fédérale.

### *Loi sur les textes réglementaires*

**(2)** Les articles 3, 5 et 11 de la *Loi sur les textes réglementaires* ne s'appliquent pas au décret pris au titre du présent article.

### Durée de validité

**(3)** Sauf révocation, le décret produit ses effets pendant une période maximale de quatre-vingt-dix jours à compter de sa prise.

### Incompatibilité

**(4)** Les dispositions du décret pris en vertu du paragraphe (1) l'emportent sur toute disposition incompatible de l'arrêté pris en vertu du paragraphe 35.1(2).

1996, ch. 31, art. 36; 2019, ch. 8, art. 6.

**37** [Abrogé, 2019, ch. 8, art. 7]

**38** [Abrogé, 2019, ch. 8, art. 7]

## Administration and Enforcement

### Designation

#### Enforcement officers

**39 (1)** The Minister may designate persons or classes of persons as enforcement officers for the purposes of the administration and enforcement of this Act and the regulations.

#### Designation of provincial government employees

**(2)** The Minister may not designate any person or class of persons employed by the government of a province unless that government agrees.

#### Certificate of designation

**(3)** Every enforcement officer must be provided with a certificate of designation as an enforcement officer in a form approved by the Minister and, on entering any place under this Act, the officer shall, if so requested, show the certificate to the occupant or person in charge of the place.

#### Powers of peace officers

**(4)** For the purposes of this Act and the regulations, enforcement officers have all the powers of a peace officer, but the Minister may specify limits on those powers when designating any person or class of persons.

#### Exemptions for law enforcement activities

**(5)** For the purpose of investigations and other law enforcement activities under this Act, the Minister may, on any terms and conditions the Minister considers necessary, exempt enforcement officers who are carrying out duties or functions under this Act, and persons acting under their direction and control, from the application of any provision of this Act or the regulations.

#### Obstruction

**(6)** When an enforcement officer is carrying out duties or functions under this Act or the regulations, no person shall

**(a)** knowingly make any false or misleading statement either orally or in writing to the enforcement officer; or

**(b)** otherwise wilfully obstruct the enforcement officer.

1996, c. 31, s. 39; 2019, c. 8, s. 8.

## Exécution et contrôle d'application

### Désignation

#### Désignation

**39 (1)** Le ministre peut désigner toute personne — individuellement ou au titre de son appartenance à une catégorie donnée — à titre d'agent de l'autorité pour l'exécution et le contrôle d'application de la présente loi et des règlements.

#### Fonctionnaires provinciaux

**(2)** La désignation de fonctionnaires provinciaux est toutefois subordonnée à l'agrément du gouvernement provincial intéressé.

#### Présentation du certificat

**(3)** Les agents de l'autorité sont munis d'un certificat de désignation en la forme approuvée par le ministre qu'ils présentent, sur demande, au responsable ou à l'occupant des lieux qui font l'objet de leur visite.

#### Assimilation à un agent de la paix

**(4)** Pour l'application de la présente loi et de ses règlements, les agents de l'autorité ont tous les pouvoirs d'un agent de la paix; le ministre peut toutefois restreindre ceux-ci lors de la désignation.

#### Exemptions

**(5)** Pour les enquêtes et autres mesures de contrôle d'application de la loi, le ministre peut, aux conditions qu'il juge nécessaires, soustraire tout agent de l'autorité agissant dans l'exercice de ses fonctions — ainsi que toute personne agissant sous la direction ou l'autorité de celui-ci — à l'application de la présente loi ou des règlements, ou de leurs dispositions.

#### Entrave

**(6)** Il est interdit d'entraver volontairement l'action des agents de l'autorité dans l'exercice de leurs fonctions ou de leur faire sciemment, oralement ou par écrit, une déclaration fausse ou trompeuse.

1996, ch. 31, art. 39; 2019, ch. 8, art. 8.

## Enforcement Officer's Powers

### Inspections

**39.1 (1)** For a purpose related to verifying compliance or preventing non-compliance with this Act and the regulations, an enforcement officer may enter and inspect any place, including any conveyance, in which the enforcement officer has reasonable grounds to believe, that there is any thing to which this Act or the regulations apply or any book, record, electronic data or other document relating to the application of this Act or the regulations, and the enforcement officer may, for that purpose,

- (a) open or cause to be opened any container that the enforcement officer has reasonable grounds to believe contains that thing, book, record, electronic data or other document;
- (b) examine the thing and take samples free of charge;
- (c) require any person to produce the book, record, electronic data or other document for examination or copying, in whole or in part;
- (d) use or cause to be used any computer system or data processing system at the place being inspected to examine any data contained in, or available to, the system;
- (e) reproduce any record or cause it to be reproduced from the data in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and
- (f) use or cause to be used any copying equipment at the place being inspected to make copies of any book, record, electronic data or other document.

### Disposition of samples

**(1.1)** An enforcement officer may dispose of a sample taken under paragraph (1)(b) in any manner that the officer considers appropriate.

### Seizure

**(1.2)** For the purposes of subsection (1), the enforcement officer may seize any thing that the enforcement officer has reasonable grounds to believe

- (a) was used in the contravention of this Act or the regulations;
- (b) is something in relation to which this Act or the regulations have been contravened; or

## Pouvoirs de l'agent de l'autorité

### Visite

**39.1 (1)** L'agent de l'autorité peut, à toute fin liée à la vérification du respect ou à la prévention du non-respect de la présente loi et de ses règlements, visiter tout lieu — y compris un moyen de transport — s'il a des motifs raisonnables de croire que s'y trouve un objet visé par la présente loi ou ses règlements ou un livre, un registre, des données électroniques ou tout autre document relatifs à l'application de la loi et de ses règlements. Il peut en outre, à cette fin :

- a) ouvrir ou faire ouvrir tout contenant s'il a des motifs raisonnables de croire que s'y trouve l'objet, le livre, le registre, les données électroniques ou tout autre document;
- b) examiner tout objet et en prélever, sans compensation, des échantillons;
- c) exiger la communication du livre, du registre, des données électroniques ou de tout autre document, pour examen ou reproduction totale ou partielle;
- d) utiliser ou faire utiliser tout ordinateur ou système informatique se trouvant sur place pour prendre connaissance des données qu'il contient ou auxquelles il donne accès;
- e) obtenir ces données sous forme d'imprimé ou sous toute autre forme intelligible et les emporter aux fins d'examen ou de reproduction;
- f) utiliser ou faire utiliser le matériel de reproduction se trouvant sur place pour faire des copies d'un livre, d'un registre, de données électroniques ou de tout autre document.

### Sort des échantillons

**(1.1)** L'agent de l'autorité peut disposer des échantillons prélevés en vertu de l'alinéa (1)b) de la façon qu'il estime indiquée.

### Saisie

**(1.2)** Pour l'application du paragraphe (1), l'agent de l'autorité peut saisir tout objet dont il a des motifs raisonnables de croire qu'il a servi ou est lié à la contravention de la présente loi ou de ses règlements ou qu'il a été obtenu dans le cadre d'une telle contravention.

(c) was obtained by the contravention of this Act or the regulations.

#### Assistance

(1.3) The owner or the person in charge of the place, and every person found in the place, shall

(a) give the enforcement officer all assistance that is reasonably required to enable the officer to exercise their powers or to perform their duties or functions under this section; and

(b) provide the enforcement officer with any information or any book, record, electronic data or other document, and access to any data, that are reasonably required for that purpose.

#### Conveyance

(2) For the purposes of carrying out the inspection, the enforcement officer may stop a conveyance or direct that it be moved to any place, including in Canadian waters or the exclusive economic zone of Canada, where the inspection can be carried out.

#### Passage through private property

(2.1) An enforcement officer and any person accompanying them may enter and pass through private property, other than a dwelling-place, in order to gain entry to a place referred to in subsection (1). For greater certainty, neither person is liable for doing so.

#### Passage through private property by authorized person

(2.2) A person acting under the direction and control of an enforcement officer may, for the purposes of exercising the officer's powers or performing the officer's duties and functions under this section, enter and pass through private property, other than a dwelling-place, in order to gain entry to a marine protected area. For greater certainty, the person is not liable for doing so.

#### Dwelling-place

(3) The enforcement officer may not enter a dwelling-place except with the consent of the occupant or person in charge of the dwelling-place or under the authority of a warrant.

#### Warrant

(4) Where on *ex parte* application a justice, as defined in section 2 of the *Criminal Code*, is satisfied by information on oath that

#### Assistance

(1.3) Le propriétaire ou le responsable du lieu, ainsi que quiconque s'y trouve, sont assujettis aux obligations suivantes :

a) prêter à l'agent de l'autorité toute l'assistance qu'il peut valablement exiger pour lui permettre d'exercer ses attributions au titre du présent article;

b) fournir à l'agent de l'autorité tout renseignement ou les livres, les registres, les données électroniques ou tout autre document ainsi que l'accès aux données qu'il peut valablement exiger à cette même fin.

#### Moyens de transport

(2) L'agent de l'autorité peut procéder à l'immobilisation du moyen de transport qu'il entend visiter et le faire conduire en tout lieu — y compris en un lieu situé dans les eaux canadiennes ou la zone économique exclusive du Canada — où il peut effectuer la visite.

#### Circulation dans une propriété privée

(2.1) L'agent de l'autorité et toute personne l'accompagnant peuvent, afin d'accéder au lieu visé au paragraphe (1), pénétrer dans une propriété privée — à l'exclusion de tout local d'habitation — et y circuler. Il est entendu que ces personnes ne peuvent encourir de poursuite à cet égard.

#### Circulation dans une propriété privée : personne autorisée

(2.2) Toute personne agissant sous la direction ou l'autorité d'un agent de l'autorité peut, pour l'exercice des attributions qui lui sont conférées au titre du présent article, avoir accès à une zone de protection marine, pénétrer dans une propriété privée — à l'exclusion de tout local d'habitation — et y circuler. Il est entendu que ces personnes ne peuvent encourir de poursuite à cet égard.

#### Local d'habitation

(3) Dans le cas d'un local d'habitation, l'agent de l'autorité ne peut procéder à la visite sans l'autorisation du responsable ou de l'occupant que s'il est muni d'un mandat de perquisition.

#### Mandat de perquisition

(4) Sur demande *ex parte*, le juge de paix — au sens de l'article 2 du *Code criminel* — peut signer un mandat autorisant, sous réserve des conditions éventuellement fixées, l'agent de l'autorité à procéder à la visite d'un local d'habitation s'il est convaincu, sur la foi d'une

(a) the conditions for entry described in subsection (1) exist in relation to a dwelling-place,

(b) entry to the dwelling-place is necessary in relation to the administration of this Act or the regulations, and

(c) entry to the dwelling-place has been refused or there are reasonable grounds for believing that entry will be refused,

the justice may issue a warrant authorizing the enforcement officer to enter the dwelling-place subject to any conditions that may be specified in the warrant.

1996, c. 31, s. 39.1; 2019, c. 8, s. 10.

## Direction and Detention of Ships

### Direction of ship to place

**39.2** An enforcement officer may direct a ship to move to any place in Canadian waters or the exclusive economic zone of Canada if they have reasonable grounds to believe that the ship or a person on board the ship has committed, is committing or is about to commit an offence under this Act in Canadian waters or the exclusive economic zone of Canada and that the ship was, is being or is about to be used in connection with the commission of the offence.

1996, c. 31, s. 39.2; 2019, c. 8, s. 11.

### Detention order to ship

**39.21 (1)** An enforcement officer may make a detention order in relation to a ship if they have reasonable grounds to believe that the ship or a person on board the ship has committed an offence under this Act in Canadian waters or the exclusive economic zone of Canada and that the ship was used in connection with the commission of the offence.

### Order in writing

(2) The detention order shall be in writing and addressed to all persons, at any port in Canada where the ship to which the order relates is or will be located, who are empowered to give a clearance in respect of the ship.

### Service of order

(3) Notice of the detention order shall be served by delivering a copy of the notice personally to the master or another officer, the authorized representative, the owner or the operator of the ship, or if service cannot reasonably be effected personally, by posting a copy of the notice on any conspicuous part of the ship.

dénonciation sous serment, que sont réunis les éléments suivants :

a) les circonstances prévues au paragraphe (1) existent;

b) la visite est nécessaire pour l'application de la présente loi ou de ses règlements;

c) un refus a été opposé à la visite ou il y a des motifs raisonnables de croire que tel sera le cas.

1996, ch. 31, art. 39.1; 2019, ch. 8, art. 10.

## Ordres aux navires et détention de navires

### Ordre aux navires de se rendre en un lieu

**39.2** L'agent de l'autorité qui a des motifs raisonnables de croire qu'un navire ou une personne à son bord a commis, est en train de commettre ou est sur le point de commettre, dans les eaux canadiennes ou la zone économique exclusive du Canada, une infraction à la présente loi et que le navire a été ou est utilisé, ou est sur le point d'être utilisé dans le cadre de la perpétration de l'infraction peut ordonner au navire de se rendre en un lieu situé dans les eaux canadiennes ou la zone économique exclusive du Canada.

1996, ch. 31, art. 39.2; 2019, ch. 8, art. 11.

### Ordre de détention de navires

**39.21 (1)** L'agent de l'autorité qui a des motifs raisonnables de croire qu'un navire ou une personne à son bord a commis, dans les eaux canadiennes ou la zone économique exclusive du Canada, une infraction à la présente loi et que le navire a été utilisé dans le cadre de la perpétration de l'infraction peut ordonner la détention du navire.

### Ordre écrit

(2) L'ordre de détention est adressé par écrit à quiconque a, dans le port canadien où se trouve ou se trouvera le navire, le pouvoir de lui donner congé.

### Signification

(3) L'avis de l'ordre de détention est signifié au capitaine ou à un autre officier du navire qui en fait l'objet, au représentant autorisé, au propriétaire ou à l'exploitant du navire, par signification à personne d'un exemplaire ou, si la signification à personne ne peut raisonnablement se faire, par affichage d'un exemplaire à un endroit bien en vue sur le navire.

### Duty after service of order

**(4)** Once notice of the detention order is served on any person referred to in subsection (3), the ship shall not move, other than in accordance with any conditions specified in the order, until the order has been rescinded.

### No clearance after receiving order

**(5)** Subject to subsection (6), a person who has received the detention order shall not give clearance to the ship to which the order relates.

### When clearance may be given

**(6)** A person who has received the detention order may give clearance to the ship to which the order relates if

**(a)** neither the ship nor any person is charged with the offence that gave rise to the making of the order within 30 days after the day on which the order is made;

**(b)** within 30 days after the day on which the order is made, the ship or a person is charged with the offence and every accused has appeared in Canada to answer to the charge;

**(c)** Her Majesty in right of Canada is given security, in a form determined by the Minister, for payment of the maximum fine that may be imposed as a result of a conviction of every accused and costs that might be incurred in proceedings in connection with the charge or charges, or payment of any lesser amount that is approved by the Minister;

**(d)** all proceedings in respect of the offence that gave rise to the making of the order are discontinued; or

**(e)** the order is rescinded by an enforcement officer.

2019, c. 8, s. 11.

## Compliance Orders

### Compliance order

**39.22 (1)** If an enforcement officer has reasonable grounds to believe that a person is committing an offence under this Act — or is about to commit an offence under this Act — the enforcement officer may issue a compliance order directing any person described in subsection (3) to take, at their own expense, any of the measures referred to in subsection (4) that the enforcement officer believes are reasonable in the circumstances, and consistent with the protection and preservation of the marine environment and with public safety, in order to cease the commission of the offence or to refrain from committing it.

### Obligation sur signification de l'ordre

**(4)** Dès que l'avis de l'ordre de détention est signifié à une personne visée au paragraphe (3), le navire ne peut se déplacer avant que l'ordre ne soit annulé, sauf aux conditions précisées dans celui-ci.

### Aucun congé

**(5)** Sous réserve du paragraphe (6), il est interdit à quiconque a reçu l'ordre de détention de donner congé au navire.

### Congé

**(6)** Quiconque a reçu l'ordre de détention peut donner congé au navire si, selon le cas :

**a)** dans les trente jours suivant la prise de l'ordre, aucune personne ni aucun navire n'a été accusé de l'infraction qui a donné lieu à l'ordre;

**b)** dans les trente jours suivant la prise de l'ordre, une personne ou le navire a été accusé de cette infraction et chaque accusé a comparu au Canada pour répondre à l'accusation;

**c)** est remis à Sa Majesté du chef du Canada la garantie — dont la forme est déterminée par le ministre — pour le paiement soit de l'amende maximale qui peut être imposée à chaque accusé en cas de condamnation et des autres frais engendrés par le procès, soit d'une somme inférieure approuvée par le ministre;

**d)** il y a désistement de toutes les poursuites relatives à l'infraction qui a donné lieu à l'ordre;

**e)** l'ordre a été annulé par un agent de l'autorité.

2019, ch. 8, art. 11.

## Ordres d'exécution

### Ordre d'exécution

**39.22 (1)** L'agent de l'autorité qui a des motifs raisonnables de croire qu'une personne est en train de commettre ou est sur le point de commettre une infraction à la présente loi peut ordonner à tout intéressé visé au paragraphe (3) de prendre, aux frais de celui-ci, les mesures prévues au paragraphe (4) qui, selon l'agent de l'autorité, sont justifiées en l'espèce et compatibles avec la protection et la préservation du milieu marin et la sécurité publique pour mettre fin à la perpétration de l'infraction ou s'abstenir de la commettre.



### Order to ship

**(2)** For the purposes of subsection (1), an order is deemed to have been given to the ship and is binding on it, if

**(a)** the order is given to the master or another officer, the authorized representative, the owner or the operator of the ship; or

**(b)** in the case of an order that cannot be given to any person referred to in paragraph (a) despite reasonable efforts having been made to do so, the order is posted on any conspicuous part of the ship.

### Persons subject to compliance order

**(3)** Subsection (1) applies to any person who causes or contributes to, or is likely to cause or contribute to, the offence.

### Specific measures

**(4)** The compliance order may require that the person to whom it is directed take one or more of the following measures:

**(a)** do anything to comply with this Act or the regulations;

**(b)** refrain from doing anything in contravention of this Act or the regulations;

**(c)** cease any activity for a specified period or until the enforcement officer is satisfied that the activity is in compliance with this Act and the regulations;

**(d)** move any conveyance to a location by the route and in the manner that the enforcement officer specifies;

**(e)** unload or reload the contents of any conveyance; and

**(f)** take any other reasonable measure that the enforcement officer considers necessary to facilitate compliance with the order — or to restore the components of the marine environment damaged by the offence or to protect the components of the marine environment that would be put at risk if the offence were committed — including

**(i)** maintaining records on any relevant matter,

**(ii)** reporting periodically to the enforcement officer, and

### Ordre donné à un navire

**(2)** Pour l'application du paragraphe (1), est présumé avoir été donné au navire et lie celui-ci :

**a)** l'ordre donné au capitaine ou à un autre officier du navire, au représentant autorisé, au propriétaire ou à l'exploitant du navire;

**b)** dans le cas où l'ordre ne peut raisonnablement être donné aux personnes visées à l'alinéa a), l'ordre affiché à un endroit bien en vue sur le navire.

### Personnes visées

**(3)** Pour l'application du paragraphe (1), les intéressés sont, selon le cas, les personnes qui causent l'infraction ou y contribuent ou celles qui, vraisemblablement, la causeront ou y contribueront.

### Mesures

**(4)** L'ordre d'exécution peut enjoindre à l'intéressé de prendre une ou plusieurs des mesures suivantes :

**a)** faire quoi que ce soit pour se conformer à la présente loi ou ses règlements;

**b)** s'abstenir d'agir en contravention de la présente loi ou de ses règlements;

**c)** cesser l'exercice d'une activité pour une période déterminée ou jusqu'à ce que l'agent de l'autorité soit convaincu qu'elle est conforme à la présente loi et à ses règlements;

**d)** déplacer un moyen de transport à l'endroit qu'il précise, de la manière et par la route qu'il précise;

**e)** décharger un moyen de transport ou le charger;

**f)** prendre toute autre mesure raisonnable que l'agent de l'autorité estime nécessaire pour favoriser l'exécution de l'ordre — ou pour rétablir les éléments endommagés du milieu marin par l'infraction ou protéger ceux qui seraient menacés si elle était commise —, notamment :

**(i)** tenir des registres sur toute question pertinente,

**(ii)** lui faire périodiquement rapport,

**(iii)** lui transmettre les renseignements, propositions ou plans qu'il précise et qui énoncent les mesures que doit prendre l'intéressé à l'égard de toute question qui y est précisée.

(iii) submitting to the enforcement officer any information, proposal or plan specified by the enforcement officer that sets out any action to be taken by the person with respect to the subject-matter of the order.

#### Contents of compliance order

(5) Subject to section 39.23, the compliance order shall be made in writing and shall set out

- (a) the name of the person or persons to whom it is directed;
- (b) the provisions of this Act or the regulations, or the order made under subsection 35.1(2) or 36(1), that has been or that is about to be contravened;
- (c) the relevant facts surrounding the offence described in subsection (1);
- (d) the measures to be taken; and
- (e) the time or the day when each measure is to begin or the period during which it is to be carried out.

#### Statutory Instruments Act

(6) A compliance order is not a statutory instrument for the purposes of the *Statutory Instruments Act*.

2019, c. 8, s. 11.

#### Order given orally

**39.23 (1)** In the case of exigent circumstances, a compliance order may be given orally on the condition that it is followed, within seven days after the day on which the oral order was issued, by a written order issued in accordance with section 39.22.

#### Exigent circumstances

(2) For the purposes of subsection (1), exigent circumstances include circumstances in which the delay necessary to issue a written order that meets the requirements of subsection 39.22(5) would result in danger to human life or the marine environment.

2019, c. 8, s. 11.

#### Compliance with compliance order

**39.24 (1)** A person to whom a compliance order is issued shall, immediately on receipt of the order or a copy of it, or on being given an order orally under subsection 39.23(1), comply with the order.

#### Teneur de l'ordre d'exécution

(5) Sous réserve de l'article 39.23, l'ordre d'exécution est donné par écrit et énonce les éléments suivants :

- a) le nom de la personne ou des personnes à qui il est adressé;
- b) les dispositions de la présente loi ou de ses règlements, ou l'arrêté pris en vertu du paragraphe 35.1(2) ou le décret pris en vertu du paragraphe 36(1) qui ont été enfreints ou sont sur le point d'être enfreints;
- c) les faits pertinents concernant la perpétration de l'infraction visée au paragraphe (1);
- d) les mesures à prendre;
- e) le moment où chaque mesure doit prendre effet ou son délai d'exécution.

#### Loi sur les textes réglementaires

(6) L'ordre d'exécution n'est pas un texte réglementaire au sens de la *Loi sur les textes réglementaires*.

2019, ch. 8, art. 11.

#### Ordre donné oralement

**39.23 (1)** En cas d'urgence, l'ordre d'exécution peut être donné oralement à condition que, dans les sept jours suivant celui où l'ordre a été donné verbalement, un ordre d'exécution conforme à l'article 39.22 suive par écrit.

#### Urgence

(2) Pour l'application du paragraphe (1), il y a notamment urgence dans les cas où le délai pour donner un ordre d'exécution écrit qui satisfait aux exigences du paragraphe 39.22(5) risquerait de mettre en danger la vie humaine ou le milieu marin.

2019, ch. 8, art. 11.

#### Exécution de l'ordre d'exécution

**39.24 (1)** L'intéressé exécute l'ordre d'exécution à la réception de l'original ou de sa copie ou dès qu'il lui est donné oralement en vertu du paragraphe 39.23(1), selon le cas.

### No bar to proceedings

(2) The issuance of, or compliance with, a compliance order is not a bar to any proceedings against the person under this or any other Act in relation to the offence described in subsection 39.22(1).

2019, c. 8, s. 11.

### Intervention by enforcement officer

**39.25 (1)** If a person to whom a compliance order is issued fails to take any measures specified in the order, an enforcement officer may take the measures or cause them to be taken.

### Access to property

(2) An enforcement officer or other person authorized by an enforcement officer to take measures under subsection (1) may enter and have access to any place, other than a dwelling-place, and may do any reasonable thing that may be necessary in the circumstances.

### Personal liability

(3) A person, other than a person described in subsection 39.22(3), who provides assistance or advice to the enforcement officer in taking the measures specified in an order or who takes any measures authorized or required by an enforcement officer under subsection (1) is not personally liable either civilly or criminally in respect of any act or omission in the course of providing assistance or advice or taking any measures under that subsection unless it is established that the person acted in bad faith.

2019, c. 8, s. 11.

### Recovery of reasonable costs and expenses by Her Majesty

**39.26 (1)** Her Majesty in right of Canada may recover the costs and expenses of, and any costs and expenses incidental to, any measures taken under subsection 39.25(1) from any person referred to in subsection 39.22(3).

### Costs reasonably incurred

(2) The costs and expenses may be recovered only to the extent that they can be established to have been reasonably incurred in the circumstances.

### Liability

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

### Autres procédures

(2) La communication ou l'exécution de l'ordre d'exécution n'empêche pas l'introduction de quelque procédure que ce soit contre l'intéressé dans le cadre de la présente loi ou de toute autre loi relativement à l'infraction visée au paragraphe 39.22(1).

2019, ch. 8, art. 11.

### Intervention de l'agent de l'autorité

**39.25 (1)** Faute par l'intéressé de prendre les mesures qui sont énoncées dans l'ordre d'exécution, l'agent de l'autorité peut les prendre ou les faire prendre.

### Accès

(2) L'agent de l'autorité ou la personne autorisée par l'agent à prendre les mesures visées au paragraphe (1) a accès à tout lieu — à l'exclusion de tout local d'habitation — ou bien et peut prendre les mesures qui s'imposent dans les circonstances.

### Responsabilité personnelle

(3) La personne autre que tout intéressé visé au paragraphe 39.22(3) qui fournit aide ou conseils à l'agent de l'autorité quant à la prise des mesures énoncées dans l'ordre d'exécution ou qui prend, en application du paragraphe (1), les mesures autorisées ou requises par l'agent de l'autorité n'encourt aucune responsabilité personnelle, ni au civil ni au criminel, pour les actes ou omissions constatés à cette occasion, sauf s'il est établi qu'elle était de mauvaise foi.

2019, ch. 8, art. 11.

### Recouvrement des frais par Sa Majesté

**39.26 (1)** Sa Majesté du chef du Canada peut recouvrer les frais directs et indirects occasionnés par la prise des mesures visées au paragraphe 39.25(1) auprès des intéressés visés au paragraphe 39.22(3).

### Frais justifiés

(2) Les frais exposés ne peuvent être recouverts que dans la mesure où il peut être établi qu'ils étaient justifiés dans les circonstances.

### Solidarité

(3) Les personnes visées au paragraphe (1) sont solidairement responsables des frais visés à ce paragraphe.

### Procedure

**(4)** A claim under this section may be sued for and recovered by Her Majesty in right of Canada with costs in proceedings brought or taken in the name of Her Majesty in right of Canada in any court of competent jurisdiction.

### Recourse or indemnity

**(5)** This section does not limit or restrict any right of recourse or indemnity that a person may have against any other person.

### Limitation and prescription

**(6)** If events giving rise to a claim under this section occur, proceedings in respect of the claim may be commenced not later than five years after the day on which the events occur.

2019, c. 8, s. 11.

## Things Seized, Detained, Abandoned or Forfeited

### Custody of things seized

**39.3 (1)** Subject to subsections (2) to (3.1), if an enforcement officer seizes a thing under this Act or under a warrant issued under the *Criminal Code*,

**(a)** sections 489.1 and 490 of the *Criminal Code* apply; and

**(b)** the enforcement officer, or any person that the officer may designate, shall retain custody of the thing, subject to any order made under section 490 of the *Criminal Code*.

### Forfeiture where ownership not ascertainable

**(2)** Where the lawful ownership of or entitlement to the seized thing cannot be ascertained within thirty days after its seizure, the thing or any proceeds of its disposition are forfeited to

**(a)** Her Majesty in right of Canada, if the thing was seized by an enforcement officer employed in the federal public administration; or

**(b)** Her Majesty in right of a province, if the thing was seized by an enforcement officer employed by the government of that province.

### Perishable things

**(3)** Where the seized thing is perishable, the enforcement officer may dispose of it or destroy it, and any proceeds of its disposition must be

### Poursuites

**(4)** Sa Majesté du chef du Canada peut recouvrer les créances, ainsi que les dépens afférents, par action en recouvrement devant tout tribunal compétent.

### Recours contre des tiers et indemnité

**(5)** Le présent article ne limite pas les recours contre les tiers ni le droit à une indemnité.

### Prescription

**(6)** Le recouvrement se prescrit par cinq ans à compter de la date où les faits à l'origine des créances sont survenus.

2019, ch. 8, art. 11.

## Garde, détention, abandon, ou confiscation d'objets

### Garde

**39.3 (1)** Sous réserve des paragraphes (2) à (3.1) :

**a)** les articles 489.1 et 490 du *Code criminel* s'appliquent en cas de saisies d'objets effectuées par l'agent de l'autorité en vertu de la présente loi ou d'un mandat délivré au titre du *Code criminel*;

**b)** la responsabilité de ces objets incombe, sous réserve d'une ordonnance rendue aux termes de l'article 490 du *Code criminel*, à l'agent de l'autorité ou à la personne qu'il désigne.

### Confiscation de plein droit

**(2)** Dans le cas où leur propriétaire légitime — ou la personne qui a légitimement droit à leur possession — ne peut être identifié dans les trente jours suivant la saisie, les objets, ou le produit de leur aliénation, sont confisqués au profit de Sa Majesté du chef du Canada ou d'une province, selon que l'agent de l'autorité saisissant est un fonctionnaire de l'administration publique fédérale ou un fonctionnaire de la province en question.

### Biens périssables

**(3)** L'agent de l'autorité peut aliéner ou détruire les objets saisis périssables; le produit de l'aliénation est soit remis à leur propriétaire légitime ou à la personne qui a légitimement droit à leur possession, soit, lorsque des poursuites fondées sur la présente loi ont été intentées

(a) paid to the lawful owner or person lawfully entitled to possession of the thing, unless proceedings under this Act are commenced within ninety days after its seizure; or

(b) retained by the enforcement officer pending the outcome of the proceedings.

#### Release of seized fish

**(3.1)** The enforcement officer who seizes any *fish* as defined in subsection 2(1) of the *Fisheries Act* may, at the time of the seizure, return to the water any fish that they believe to be alive.

#### Abandonment

**(4)** The owner of the seized thing may abandon it to Her Majesty in right of Canada or a province.

1996, c. 31, s. 39.3; 2003, c. 22, s. 224(E); 2019, c. 8, s. 12.

#### Disposition by Minister

**39.4** Any thing that has been forfeited or abandoned under this Act must be dealt with and disposed of as the Minister may direct.

#### Liability for costs

**39.5** The lawful owner and any person lawfully entitled to possession of any thing seized, detained, abandoned or forfeited under this Act are jointly and severally, or solidarily, liable for all the costs of inspection, seizure, detention, abandonment, forfeiture or disposition incurred by Her Majesty in right of Canada in excess of any proceeds of disposition of the thing that have been forfeited to Her Majesty under this Act.

1996, c. 31, s. 39.5; 2019, c. 8, s. 13.

## Offences and Punishment

#### Offence and punishment — persons

**39.6 (1)** Every individual or corporation that contravenes subsection 39.21(5) or 39.24(1), a regulation made under paragraph 35(3)(c) or (d) or 52.1(a), or an order made under subsection 35.1(2) or 36(1) is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of an individual,

(A) for a first offence, to a fine of not less than \$15,000 and not more than \$1,000,000, and

dans les quatre-vingt-dix jours suivant la saisie, retenu par lui jusqu'au règlement de l'affaire.

#### Remise à l'eau d'un poisson

**(3.1)** L'agent de l'autorité peut, au moment de la saisie, remettre à l'eau les *poissons*, au sens du paragraphe 2(1) de la *Loi sur les pêches*, qu'il estime encore vivants.

#### Abandon

**(4)** Le propriétaire légitime de tout objet saisi en application de la présente loi peut l'abandonner au profit de Sa Majesté du chef du Canada ou d'une province.

1996, ch. 31, art. 39.3; 2003, ch. 22, art. 224(A); 2019, ch. 8, art. 12.

#### Disposition par le ministre

**39.4** Il est disposé des objets saisis ou du produit de leur aliénation conformément aux instructions du ministre.

#### Frais

**39.5** Le propriétaire légitime et toute personne ayant légitimement droit à la possession des objets saisis, détenus, abandonnés ou confisqués au titre de la présente loi sont solidairement responsables des frais — liés à la visite, à l'abandon, à la saisie, à la détention, à la confiscation ou à l'aliénation — supportés par Sa Majesté du chef du Canada lorsqu'ils en excèdent le produit de l'aliénation.

1996, ch. 31, art. 39.5; 2019, ch. 8, art. 13.

## Infractions et peines

#### Infractions et peines : personnes

**39.6 (1)** Toute personne physique ou personne morale qui contrevient aux paragraphes 39.21(5) ou 39.24(1), aux règlements d'application des alinéas 35(3)c) ou d) ou 52.1a), à un arrêté pris en vertu du paragraphe 35.1(2) ou à un décret pris en vertu du paragraphe 36(1) commet une infraction et encourt, sur déclaration de culpabilité :

a) par mise en accusation :

(i) s'il s'agit d'une personne physique :

(A) pour une première infraction, une amende d'au moins 15 000 \$ et d'au plus 1 000 000 \$,

**(B)** for a second or subsequent offence, to a fine of not less than \$30,000 and not more than \$2,000,000,

**(ii)** in the case of a corporation, other than a corporation referred to in subparagraph (iii),

**(A)** for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

**(iii)** in the case of a corporation that the court has determined to be a small revenue corporation,

**(A)** for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

**(b)** on summary conviction,

**(i)** in the case of an individual,

**(A)** for a first offence, to a fine of not less than \$5,000 and not more than \$300,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$10,000 and not more than \$600,000,

**(ii)** in the case of a corporation, other than a corporation referred to in subparagraph (iii),

**(A)** for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and

**(iii)** in the case of a corporation that the court has determined to be a small revenue corporation,

**(A)** for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

**(B)** en cas de récidive, une amende d'au moins 30 000 \$ et d'au plus 2 000 000 \$,

**(ii)** s'il s'agit d'une personne morale, à l'exception de la personne morale visée au sous-alinéa (iii) :

**(A)** pour une première infraction, une amende d'au moins 500 000 \$ et d'au plus 6 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 1 000 000 \$ et d'au plus 12 000 000 \$,

**(iii)** s'il s'agit d'une personne morale que le tribunal déclare personne morale à revenus modestes :

**(A)** pour une première infraction, une amende d'au moins 75 000 \$ et d'au plus 4 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 150 000 \$ et d'au plus 8 000 000 \$;

**b)** par procédure sommaire :

**(i)** s'il s'agit d'une personne physique :

**(A)** pour une première infraction, une amende d'au moins 5 000 \$ et d'au plus 300 000 \$,

**(B)** en cas de récidive, une amende d'au moins 10 000 \$ et d'au plus 600 000 \$,

**(ii)** s'il s'agit d'une personne morale, à l'exception de la personne morale visée au sous-alinéa (iii) :

**(A)** pour une première infraction, une amende d'au moins 100 000 \$ et d'au plus 4 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 200 000 \$ et d'au plus 8 000 000 \$,

**(iii)** s'il s'agit d'une personne morale que le tribunal déclare personne morale à revenus modestes :

**(A)** pour une première infraction, une amende d'au moins 25 000 \$ et d'au plus 2 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 50 000 \$ et d'au plus 4 000 000 \$.

### Offence and punishment — ship

**(2)** Every ship that contravenes subsection 39.21(4) or 39.24(1), a regulation made under paragraph 35(3)(c) or (d) or 52.1(a), an order made under subsection 35.1(2) or 36(1) or a direction made under section 39.2 is guilty of an offence and liable

**(a)** on conviction on indictment,

**(i)** in the case of a ship of 7 500 tonnes deadweight or more,

**(A)** for a first offence, to a fine of not less than \$500,000 and not more than \$6,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$1,000,000 and not more than \$12,000,000, and

**(ii)** in the case of a ship of less than 7 500 tonnes deadweight,

**(A)** for a first offence, to a fine of not less than \$75,000 and not more than \$4,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$150,000 and not more than \$8,000,000; or

**(b)** on summary conviction,

**(i)** in the case of a ship of 7 500 tonnes deadweight or more,

**(A)** for a first offence, to a fine of not less than \$100,000 and not more than \$4,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$200,000 and not more than \$8,000,000, and

**(ii)** in the case of a ship of less than 7 500 tonnes deadweight,

**(A)** for a first offence, to a fine of not less than \$25,000 and not more than \$2,000,000, and

**(B)** for a second or subsequent offence, to a fine of not less than \$50,000 and not more than \$4,000,000.

### Offence and punishment — persons

**(3)** Every individual or corporation that contravenes subsection 39(6) or a regulation made under paragraph 52.1(b) or (c) is guilty of an offence and liable

**(a)** on conviction on indictment,

### Infraction et peine : navire

**(2)** Tout navire qui contrevient aux paragraphes 39.21(4) ou 39.24(1), aux règlements d'application des alinéas 35(3)c) ou d) ou 52.1a), à un arrêté pris en vertu du paragraphe 35.1(2), à un décret pris en vertu du paragraphe 36(1) ou à un ordre donné en vertu de l'article 39.2 commet une infraction et encourt, sur déclaration de culpabilité :

**a)** par mise en accusation :

**(i)** s'il s'agit d'un navire jaugeant 7 500 tonnes ou plus de port en lourd :

**(A)** pour une première infraction, une amende d'au moins 500 000 \$ et d'au plus 6 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 1 000 000 \$ et d'au plus 12 000 000 \$,

**(ii)** s'il s'agit d'un navire jaugeant moins de 7 500 tonnes de port en lourd :

**(A)** pour une première infraction, une amende d'au moins 75 000 \$ et d'au plus 4 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 150 000 \$ et d'au plus 8 000 000 \$;

**b)** par procédure sommaire :

**(i)** s'il s'agit d'un navire jaugeant 7 500 tonnes ou plus de port en lourd :

**(A)** pour une première infraction, une amende d'au moins 100 000 \$ et d'au plus 4 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 200 000 \$ et d'au plus 8 000 000 \$,

**(ii)** s'il s'agit d'un navire jaugeant moins de 7 500 tonnes de port en lourd :

**(A)** pour une première infraction, une amende d'au moins 25 000 \$ et d'au plus 2 000 000 \$,

**(B)** en cas de récidive, une amende d'au moins 50 000 \$ et d'au plus 4 000 000 \$.

### Infraction et peine : personnes

**(3)** Toute personne physique ou personne morale qui contrevient au paragraphe 39(6) ou aux règlements d'application des alinéas 52.1b) ou c) commet une infraction et encourt, sur déclaration de culpabilité :

(i) for a first offence, to a fine of not more than \$500,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$100,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$200,000.

#### Offence and punishment — ship

(4) Every ship that contravenes any regulation made under paragraph 52.1(b) or (c) is guilty of an offence and liable

(a) on conviction on indictment,

(i) for a first offence, to a fine of not more than \$500,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$1,000,000; or

(b) on summary conviction,

(i) for a first offence, to a fine of not more than \$100,000, and

(ii) for a second or subsequent offence, to a fine of not more than \$200,000.

#### Small revenue corporation status

(5) For the purposes of subsection (1), a court may determine a corporation to be a small revenue corporation if the court is satisfied that the corporation's gross revenues for the year immediately before the day on which the offence is committed — or, if the offence is committed on more than one day, for the year immediately before the first day on which the offence is committed — were not more than \$5,000,000.

#### Non-application

(6) The minimum amounts of fines set out in this section do not apply to any proceeding brought in accordance with subsection 39.93(1) or under the *Contraventions Act*.

1996, c. 31, s. 39.6; 2019, c. 8, s. 13.

a) par mise en accusation :

(i) pour une première infraction, une amende d'au plus 500 000 \$,

(ii) en cas de récidive, une amende d'au plus 1 000 000 \$;

b) par procédure sommaire :

(i) pour une première infraction, une amende d'au plus 100 000 \$,

(ii) en cas de récidive, une amende d'au plus 200 000 \$.

#### Infraction et peine : navire

(4) Tout navire qui contrevient aux règlements d'application des alinéas 52.1b) ou c) commet une infraction et encourt, sur déclaration de culpabilité :

a) par mise en accusation :

(i) pour une première infraction, une amende d'au plus 500 000 \$,

(ii) en cas de récidive, une amende d'au plus 1 000 000 \$;

b) par procédure sommaire :

(i) pour une première infraction, une amende d'au plus 100 000 \$,

(ii) en cas de récidive, une amende d'au plus 200 000 \$.

#### Déclaration : personne morale à revenus modestes

(5) Pour l'application du paragraphe (1), le tribunal peut déclarer qu'une personne morale est une personne morale à revenus modestes s'il est convaincu que ses revenus bruts, dans la période d'un an précédant immédiatement la date de l'infraction — ou, si celle-ci a été commise sur plus d'un jour, dans la période d'un an précédant immédiatement le premier jour où elle a été commise —, n'excédaient pas 5 000 000 \$.

#### Non-application

(6) Les amendes minimales prévues au présent article ne s'appliquent pas relativement aux poursuites intentées conformément au paragraphe 39.93(1) ou en vertu de la *Loi sur les contraventions*.

1996, ch. 31, art. 39.6; 2019, ch. 8, art. 13.



### Liability of directors, officers or agents or mandataries

**39.61** If a corporation or a ship owned or operated by a corporation commits an offence under section 39.6, any director, officer, agent or mandatary of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence and is liable on conviction to the penalty provided for by that section for an individual in respect of the offence committed by the corporation or the ship, whether or not the corporation or the ship has been prosecuted or convicted.

2019, c. 8, s. 13.

### Liability of owners, operators, masters and chief engineers of ships

**39.62** If a ship commits an offence under section 39.6 and the owner, operator, master or chief engineer of the ship directed, authorized, assented to, acquiesced in or participated in the commission of the offence, the owner, operator, master or chief engineer, as the case may be, is a party to and guilty of the offence and is liable on conviction to the penalty provided for by that section for an individual who commits an offence under that section, whether or not the ship has been prosecuted or convicted.

2019, c. 8, s. 13.

### Defence

**39.63 (1)** A person shall not be found guilty of an offence under section 39.6, other than an offence consisting of a contravention of subsection 39(6), if the person establishes that they exercised due diligence to prevent the commission of the offence.

#### Defence — ship

**(2)** If a ship is prosecuted for an offence, only the persons referred to in subsection 39.67(5) may establish, for the purposes of subsection (1), that they exercised due diligence to prevent the commission of the offence.

### Contravention of unpublished order

**(3)** A person shall not be found guilty of an offence consisting of a contravention of an order made under subsection 36(1) that, at the time of the alleged contravention, had not been published in the *Canada Gazette* unless it is proved that reasonable steps had been taken before that time to bring the purport of the order to the attention of those persons likely to be affected by it.

2019, c. 8, s. 13.

### Responsabilité pénale : dirigeants, administrateurs et mandataires

**39.61** En cas de perpétration d'une infraction prévue à l'article 39.6 par une personne morale ou par un navire appartenant à une personne morale ou étant exploité par une telle personne, ceux des dirigeants, administrateurs ou mandataires de la personne morale qui l'ont ordonnée ou autorisée, ou qui y ont consenti ou participé, sont considérés comme des coauteurs de l'infraction et encourrent, sur déclaration de culpabilité, la peine prévue pour une personne physique aux termes de cet article, que la personne morale ou le navire, selon le cas, ait été ou non poursuivi ou condamné.

2019, ch. 8, art. 13.

### Responsabilité pénale : propriétaire, exploitant, capitaine et mécanicien en chef

**39.62** En cas de perpétration d'une infraction prévue à l'article 39.6 par un navire, son propriétaire, exploitant, capitaine ou mécanicien en chef qui l'a ordonnée ou autorisée, ou qui y a consenti ou participé, est considéré comme coauteur de l'infraction et encourt, sur déclaration de culpabilité, la peine prévue pour une personne physique pour la perpétration d'une infraction aux termes de cet article, que le navire ait été ou non poursuivi ou condamné.

2019, ch. 8, art. 13.

### Disculpation

**39.63 (1)** Nul ne peut être déclaré coupable d'une infraction prévue à l'article 39.6 — à l'exception d'une infraction fondée sur une contravention au paragraphe 39(6) — s'il établit qu'il a pris toutes les précautions voulues pour prévenir sa perpétration.

#### Disculpation : navire

**(2)** Lorsqu'un navire est poursuivi pour une infraction, seules les personnes visées au paragraphe 39.67(5) peuvent établir, pour l'application du paragraphe (1), qu'elles ont pris les précautions voulues pour prévenir la perpétration de l'infraction.

### Contravention à un décret non publié

**(3)** Nul ne peut être déclaré coupable d'une contravention à un décret pris en vertu du paragraphe 36(1) qui, à la date du fait reproché, n'avait pas été publié dans la *Gazette du Canada*, sauf s'il est établi qu'à cette date les mesures nécessaires avaient été prises pour porter la substance du décret à la connaissance des personnes susceptibles d'être touchées par celui-ci.

2019, ch. 8, art. 13.

### Continuing offence

**39.64 (1)** A person who commits or continues an offence on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

### Fines cumulative

**(2)** If a person is convicted of an offence involving more than one animal, plant, other organism or object, the fine to be imposed in respect of that offence may be, despite section 39.6, the total of the fines that would have been imposed if each of the animals, plants, organisms or objects had been the subject of a separate information.

### Additional fine

**(3)** If a person is convicted of an offence and the court is satisfied that, as a result of the commission of the offence, the person acquired any property, benefit or advantage, the court shall order them to pay an additional fine in an amount equal to the court's estimation of the value of that property, benefit or advantage. The additional fine may exceed the maximum amount of any fine that may otherwise be imposed under section 39.6.

### Deeming — second and subsequent offence

**(4)** A conviction for a particular offence under section 39.6 is deemed to be a conviction for a second or subsequent offence if the court is satisfied that the person has been previously convicted — under any Act of Parliament or an Act of a provincial legislature that relates to environmental or wildlife protection or conservation — of a substantially similar offence.

### Application

**(5)** Subsection (4) applies only to previous convictions on indictment, to previous convictions on summary conviction and to previous convictions under any similar procedure under an Act of a provincial legislature.

2019, c. 8, s. 13.

### Relief from minimum fine

**39.65** The court may impose a fine that is less than the minimum amount provided for in section 39.6 if it is satisfied, on the basis of evidence submitted to the court, that the minimum fine would cause undue financial hardship to the person who has been convicted of an offence. The court shall provide reasons if it imposes a fine that is less than the minimum amount.

2019, c. 8, s. 13.

### Infraction continue

**39.64 (1)** Il est compté une infraction distincte pour chacun des jours au cours desquels se commet ou se continue l'infraction.

### Amendes cumulatives

**(2)** Malgré l'article 39.6, en cas de condamnation pour une infraction portant sur plus d'un animal, végétal, autre organisme ou objet, l'amende peut être calculée sur chacun d'eux comme s'ils avaient fait l'objet de dénonciations distinctes; l'amende infligée est alors la somme totale obtenue.

### Amende supplémentaire

**(3)** Le tribunal saisi d'une poursuite pour infraction, s'il est convaincu que la personne a acquis des biens par suite de la perpétration de l'infraction ou en a tiré des avantages, inflige au contrevenant une amende supplémentaire correspondant à son évaluation de ces biens ou avantages. Le montant de l'amende supplémentaire peut être supérieur à celui de toute autre amende pouvant être imposée en vertu de l'article 39.6.

### Présomption — récidive

**(4)** Il y a récidive au titre de l'article 39.6 si le tribunal est convaincu que le contrevenant a déjà été condamné, sous le régime de toute loi fédérale ou provinciale visant la protection ou la conservation de l'environnement ou des espèces sauvages pour une infraction essentiellement semblable.

### Limitation

**(5)** Le paragraphe (4) ne s'applique qu'aux infractions pour lesquelles le contrevenant a déjà été condamné et qui ont été poursuivies par mise en accusation, par procédure sommaire ou par toute autre procédure semblable établie sous le régime d'une loi provinciale.

2019, ch. 8, art. 13.

### Allègement de l'amende minimale

**39.65** Le tribunal peut imposer une amende inférieure à l'amende minimale prévue à l'article 39.6 s'il est convaincu, sur le fondement de la preuve présentée, que l'amende minimale constituerait un fardeau financier excessif pour le contrevenant; le cas échéant, il motive sa décision.

2019, ch. 8, art. 13.

### Application of fines

**39.66 (1)** All fines received by the Receiver General in respect of the commission of an offence under this Act, other than fines collected under the *Contraventions Act*, are to be credited to the Environmental Damages Fund, an account in the accounts of Canada, and used for purposes related to the conservation, protection or restoration of marine protected areas, or for administering that Fund.

### Recommendations of court

**(2)** The court imposing the fine may recommend to the Minister that all or a portion of the fine credited to the Environmental Damages Fund be paid to a person or an organization specified by the court for a purpose referred to in subsection (1).

2019, c. 8, s. 13.

### Application to ships

**39.67 (1)** The provisions of this Part — and those of any regulations or orders made under this Part or any regulations made under section 52.1 — relating to indictable or summary conviction offences that apply to persons also apply to ships, with any modifications that the circumstances require.

### Application of *Criminal Code*

**(2)** The provisions of the *Criminal Code* relating to indictable or summary conviction offences that apply to persons also apply to ships, with any modifications that the circumstances require.

### Service

**(3)** When a ship is charged with an offence under section 39.6, the summons may be served by leaving it with the master or another officer, the authorized representative, the owner or the operator of the ship, or if it cannot reasonably be left with any of those persons, by posting a copy of it on any conspicuous part of the ship.

### Appearance at trial

**(4)** If a ship is charged with an offence under section 39.6, the ship may appear by counsel or representative before the court. Despite the *Criminal Code*, if the ship does not so appear, a court may, on proof of service of the summons, proceed to hold the trial.

### Proof of offence by ship

**(5)** If a ship is prosecuted for an offence under section 39.6, it is sufficient proof of the offence to establish that

### Affectation

**39.66 (1)** Les sommes reçues par le receveur général en paiement d'amendes infligées à l'égard de toute infraction à la présente loi — à l'exception des sommes perçues en vertu de la *Loi sur les contraventions* — sont portées au crédit du Fonds pour dommages à l'environnement — ouvert parmi les comptes du Canada — et sont utilisées soit à des fins liées à la conservation, à la protection ou au rétablissement des zones de protection marine soit pour l'administration du fonds.

### Recommandation du tribunal

**(2)** Le tribunal qui fixe le montant de l'amende à porter au crédit du Fonds pour dommages à l'environnement peut recommander au ministre qu'une partie ou la totalité de celle-ci soit versée à la personne ou à l'organisation qu'il précise à l'une des fins prévues au paragraphe (1).

2019, ch. 8, art. 13.

### Poursuites contre des navires

**39.67 (1)** Les dispositions de la présente partie — et celles des règlements ou arrêtés pris sous son régime ainsi que celles des règlements pris en vertu de l'article 52.1 — qui sont applicables aux personnes, relativement aux actes criminels ou aux infractions punissables par procédure sommaire, s'appliquent aux navires avec les adaptations nécessaires.

### Application du *Code criminel*

**(2)** Les dispositions du *Code criminel* applicables aux personnes, relativement aux actes criminels ou aux infractions punissables par procédure sommaire s'appliquent aux navires, avec les adaptations nécessaires.

### Signification au navire

**(3)** La signification au navire accusé d'une infraction prévue à l'article 39.6 se fait par remise de la citation à comparaître au capitaine ou à un autre officier du navire, au représentant autorisé, au propriétaire ou à l'exploitant du navire ou, si la citation ne peut raisonnablement être remise à ceux-ci, par son affichage à un endroit bien en vue sur le navire.

### Comparution du navire

**(4)** Le navire accusé d'une infraction prévue à l'article 39.6 peut comparaître par l'intermédiaire d'un avocat ou de tout autre représentant; en cas de défaut de comparution, le tribunal peut, malgré le *Code criminel*, procéder par défaut sur preuve de la signification.

### Preuve d'une infraction par un navire

**(5)** Lorsqu'un navire est poursuivi pour une infraction prévue à l'article 39.6, il suffit pour établir l'infraction de

the act or omission that constitutes the offence was committed by the master of the ship or any other person on board the ship, whether or not the person on board has been identified or has been prosecuted for the offence.

#### Direction binding ship

**(6)** For the purpose of prosecuting a ship for contravening a direction made under section 39.2, any direction made under that section that is given to the master or another officer, the authorized representative, the owner or the operator of the ship is deemed to have been given to the ship and is binding on it.

#### Notice of detention order binding ship

**(7)** For the purpose of prosecuting a ship for contravening of subsection 39.21(4), the notice of the detention order served in accordance with subsection 39.21(3) is deemed to have been served on the ship and is binding on it.

2019, c. 8, s. 13.

#### Sentencing principles

**39.68 (1)** In addition to the principles and factors that the court is otherwise required to consider, including those set out in sections 718.1 to 718.21 of the *Criminal Code*, the court shall consider the following principles when sentencing a person who is convicted of an offence under this Act:

- (a)** the amount of the fine should be increased to account for every aggravating factor associated with the offence, including the aggravating factors set out in subsection (2); and
- (b)** the amount of the fine should reflect the gravity of each aggravating factor associated with the offence.

#### Aggravating factors

**(2)** The aggravating factors to be considered by the court in respect of a person convicted of an offence are the following:

- (a)** the offence caused damage or a risk of damage to any marine resource, habitat or ecosystem;
- (b)** the offence caused damage or a risk of damage to any unique, rare, particularly important or vulnerable marine resource, habitat or ecosystem;
- (c)** the damage caused by the offence is extensive, persistent or irreparable;
- (d)** the person committed the offence intentionally or recklessly;

prouver que l'acte ou l'omission qui la constitue est le fait du capitaine ou d'une autre personne à bord du navire, que cette personne soit ou non connue ou poursuivie.

#### Ordres liant le navire

**(6)** Dans le cas de poursuites contre un navire pour omission de se conformer à un ordre donné au titre de l'article 39.2, l'ordre donné au capitaine ou à un autre officier du navire, au représentant autorisé, au propriétaire ou à l'exploitant du navire est présumé l'avoir été au navire et lie celui-ci.

#### Avis d'ordres liant le navire

**(7)** Dans le cas de poursuites contre un navire pour contravention au paragraphe 39.21(4), l'avis de l'ordre de détention signifié conformément au paragraphe 39.21(3) est présumé avoir été signifié au navire et lie celui-ci.

2019, ch. 8, art. 13.

#### Détermination de la peine — principes

**39.68 (1)** Pour la détermination de la peine à infliger au contrevenant, le tribunal, en sus des principes et facteurs qu'il est par ailleurs tenu de prendre en considération — y compris ceux énoncés aux articles 718.1 à 718.21 du *Code criminel* —, tient compte des principes suivants :

- a)** le montant de l'amende devrait être majoré en fonction des circonstances aggravantes de l'infraction, notamment celles énoncées au paragraphe (2);
- b)** le montant de l'amende devrait refléter la gravité de chacune des circonstances aggravantes de l'infraction.

#### Détermination de la peine — circonstances aggravantes

**(2)** Les circonstances aggravantes dont le tribunal tient compte sont les suivantes :

- a)** l'infraction a causé un dommage ou un risque de dommage aux ressources, habitats ou écosystèmes marins;
- b)** l'infraction a causé un dommage ou un risque de dommage aux ressources, habitats ou écosystèmes marins uniques, rares, particulièrement importants ou vulnérables;
- c)** l'infraction a causé un dommage considérable, persistant ou irréparable;

(e) the person failed to take reasonable steps to prevent the commission of the offence despite having the financial means to do so;

(f) by committing the offence or failing to take action to prevent its commission, the person increased revenue or decreased costs or intended to increase revenue or decrease costs;

(g) the person committed the offence despite having been warned by the Minister or an enforcement officer of the circumstances that subsequently became the subject of the offence;

(h) the person has a history of non-compliance with an Act of Parliament or an Act of a provincial legislature that relates to environmental or wildlife protection or conservation; and

(i) after committing the offence, the person

(i) attempted to conceal its commission,

(ii) failed to take prompt action to prevent, mitigate or remediate its effects, or

(iii) failed to take prompt action to reduce the risk of committing similar offences in the future.

#### Absence of aggravating factor

(3) The absence of an aggravating factor set out in subsection (2) is not a mitigating factor.

#### Definition of damage

(4) For the purposes of paragraphs (2)(a) to (c), **damage** includes loss of use value and non-use value.

#### Reasons

(5) If the court decides not to increase the amount of the fine despite being satisfied of the existence of one or more of the aggravating factors set out in subsection (2), the court shall provide reasons for that decision.

2019, c. 8, s. 13.

#### Forfeiture

**39.7 (1)** Where a person is convicted of an offence, the convicting court may, in addition to any punishment imposed, order that any seized thing by means of or in relation to which the offence was committed, or any proceeds

**d)** le contrevenant a agi de façon intentionnelle ou insouciant;

**e)** le contrevenant a omis de prendre des mesures raisonnables pour empêcher la perpétration de l'infraction malgré sa capacité financière de le faire;

**f)** le contrevenant, en commettant l'infraction ou en omettant de prendre des mesures pour empêcher sa perpétration, a accru ses revenus ou a réduit ses dépenses, ou avait l'intention de le faire;

**g)** le contrevenant a commis l'infraction bien qu'il ait reçu du ministre ou d'un agent de l'autorité un avertissement l'informant de la situation ayant par la suite donné lieu à l'infraction;

**h)** le contrevenant a dans le passé accompli des actes contraires aux lois fédérales ou provinciales visant la protection ou la conservation de l'environnement ou des espèces sauvages;

**i)** le contrevenant, après avoir commis l'infraction :

(i) a tenté de dissimuler sa perpétration,

(ii) a omis de prendre rapidement des mesures pour empêcher ou atténuer les conséquences de l'infraction, ou encore y remédier,

(iii) a omis de prendre rapidement des mesures pour réduire le risque que des infractions semblables soient commises.

#### Absence de circonstances aggravantes

(3) L'absence de circonstances aggravantes mentionnées au paragraphe (2) n'est pas une circonstance atténuante.

#### Définition de dommage

(4) Pour l'application des alinéas (2)a) à c), **dommage** comprend la perte des valeurs d'usage et de non-usage.

#### Motifs

(5) Si le tribunal décide de ne pas majorer le montant de l'amende, bien qu'il soit convaincu de l'existence d'une ou de plusieurs des circonstances aggravantes mentionnées au paragraphe (2), il motive sa décision.

2019, ch. 8, art. 13.

#### Confiscation

**39.7 (1)** Sur déclaration de culpabilité du contrevenant, le tribunal peut prononcer, en sus de la peine infligée, la confiscation au profit de Sa Majesté du chef du Canada des objets saisis ou du produit de leur aliénation.

of its disposition, be forfeited to Her Majesty in right of Canada.

#### **Return where no forfeiture ordered**

**(2)** Where the convicting court does not order the forfeiture, the seized thing, or the proceeds of its disposition, must be returned to its lawful owner or the person lawfully entitled to it.

#### **Retention or sale**

**39.8** Where a fine is imposed on a person convicted of an offence, any seized thing, or any proceeds of its disposition, may be retained until the fine is paid, or the thing may be sold in satisfaction of the fine and the proceeds applied, in whole or in part, in payment of the fine.

#### **Orders of court**

**39.9 (1)** Where a person is convicted of an offence, the court may, in addition to any punishment imposed and having regard to the nature of the offence and the circumstances surrounding its commission, make an order containing one or more of the following prohibitions, directions or requirements:

- (a)** prohibiting the person from doing any act or engaging in any activity that could, in the opinion of the court, result in the continuation or repetition of the offence;
- (b)** directing the person to take any action that the court considers appropriate to remedy or avoid any harm to estuarine, coastal or ocean waters, or their resources that resulted or may result from the commission of the offence;
- (c)** directing the person to publish, in any manner that the court considers appropriate, the facts relating to the commission of the offence;
- (d)** directing the person to pay the Minister or the government of a province compensation, in whole or in part, for the cost of any remedial or preventive action taken by or on behalf of the Minister or that government as a result of the commission of the offence;
- (e)** directing the person to perform community service in accordance with any reasonable conditions that may be specified in the order;
- (f)** directing the person to submit to the Minister, on application to the court by the Minister within three years after the conviction, any information respecting the activities of the person that the court considers appropriate in the circumstances;

#### **Restitution des objets non confisqués**

**(2)** Si le tribunal ne prononce pas la confiscation, les objets saisis, ou le produit de leur aliénation, sont restitués au propriétaire légitime ou à la personne qui a légitimement droit à leur possession.

#### **Rétention ou vente**

**39.8** En cas de déclaration de culpabilité, les objets saisis, ou le produit de leur aliénation, peuvent être retenus jusqu'au paiement de l'amende; ces objets peuvent, s'ils ne l'ont pas déjà été, être vendus, et le produit de leur aliénation peut être affecté en tout ou en partie au paiement de l'amende.

#### **Ordonnance du tribunal**

**39.9 (1)** En plus de toute peine infligée et compte tenu de la nature de l'infraction ainsi que des circonstances de sa perpétration, le tribunal peut rendre une ordonnance imposant au contrevenant tout ou partie des obligations suivantes :

- a)** s'abstenir de tout acte ou activité risquant, selon le tribunal, d'entraîner la continuation de l'infraction ou la récidive;
- b)** prendre les mesures que le tribunal estime indiquées pour réparer ou éviter les dommages aux estuaires et aux eaux côtières et marines résultant ou pouvant résulter de la perpétration de l'infraction;
- c)** publier, de la façon indiquée par le tribunal, les faits liés à la perpétration de l'infraction;
- d)** indemniser le ministre ou le gouvernement de la province, en tout ou en partie, des frais supportés pour la réparation ou la prévention des dommages résultant ou pouvant résulter de la perpétration de l'infraction;
- e)** exécuter des travaux d'intérêt collectif à des conditions raisonnables;
- f)** fournir au ministre, sur demande présentée par celui-ci dans les trois ans suivant la déclaration de culpabilité, les renseignements relatifs à ses activités que le tribunal estime justifiés en l'occurrence;
- g)** satisfaire aux autres exigences que le tribunal estime justifiées pour assurer sa bonne conduite et empêcher toute récidive;
- h)** en garantie de l'exécution des obligations imposées au titre du présent article, fournir le cautionnement ou

(g) requiring the person to comply with any other conditions that the court considers appropriate for securing the person's good conduct and for preventing the person from repeating the offence or committing other offences;

(h) directing the person to post a bond or pay into court an amount of money that the court considers appropriate for the purpose of ensuring compliance with any prohibition, direction or requirement under this section;

(i) directing the person to pay, in the manner specified by the court, an amount for monitoring the environmental effects of any activity or marine installation or structure on any marine resource, habitat or ecosystem in any marine protected area;

(j) directing the person to pay to Her Majesty in right of Canada an amount of money that the court considers appropriate for the purpose of promoting the conservation, protection or restoration of any marine protected area;

(k) directing the person to pay, in a manner specified by the court, an amount to enable research to be conducted with respect to the conservation, protection or restoration of any marine protected area;

(l) directing the person to pay, in the manner specified by the court, an amount to environmental or other groups to assist in their work related to marine protected areas; and

(m) directing the person to pay, in the manner specified by the court, an amount to an educational institution including for scholarships for students enrolled in studies related to the environment.

### Debt due to Her Majesty

(2) If the court makes an order under paragraph (1)(j) directing a person to pay an amount to Her Majesty in right of Canada, the amount constitutes a debt due to Her Majesty in right of Canada and may be recovered in any court of competent jurisdiction.

1996, c. 31, s. 39.9; 2019, c. 8, s. 14.

### Suspended sentence

**39.91 (1)** Where a person is convicted of an offence and the court suspends the passing of sentence pursuant to the *Criminal Code*, the court may, in addition to any probation order made on suspending the passing of that sentence, make an order containing one or more of the prohibitions, directions or requirements mentioned in section 39.9.

déposer auprès du tribunal le montant que celui-ci estime indiqué;

i) verser, selon les modalités que le tribunal précise, une somme d'argent destinée à la surveillance continue des effets environnementaux d'une activité ou d'un ouvrage en mer sur les ressources, habitats ou écosystèmes marins qui sont dans une zone de protection marine;

j) verser à Sa Majesté du chef du Canada, en vue de la promotion de la conservation, de la protection ou du rétablissement des zones de protection marine, la somme que le tribunal estime indiquée;

k) verser, selon les modalités que le tribunal précise, une somme d'argent destinée à permettre des recherches sur la protection, la conservation ou le rétablissement des zones de protection marine;

l) verser, selon les modalités prescrites que le tribunal précise, une somme d'argent à des groupes concernés notamment par la protection de l'environnement, pour les aider dans le travail qu'ils accomplissent à l'égard de zones de protection marine;

m) verser à un établissement d'enseignement, selon les modalités que le tribunal précise, une somme d'argent notamment destinée à des bourses d'études attribuées à quiconque suit un programme d'études dans un domaine lié à l'environnement.

### Créance de Sa Majesté

(2) La somme à verser à Sa Majesté du chef du Canada en application de l'alinéa (1)j) constitue une créance de Sa Majesté du chef du Canada dont le recouvrement peut être poursuivi à ce titre devant le tribunal compétent.

1996, ch. 31, art. 39.9; 2019, ch. 8, art. 14.

### Condamnation avec sursis

**39.91 (1)** Lorsque, en vertu de la *Code criminel*, il sursoit au prononcé de la peine, le tribunal, en plus de toute ordonnance de probation rendue au titre de cette loi à l'occasion du sursis, peut, par ordonnance, enjoindre au contrevenant de se conformer à l'une ou plusieurs des obligations mentionnées à l'article 39.9.

### Imposition of sentence

**(2)** Where the person does not comply with the order or is convicted of another offence, within three years after the order was made, the court may, on the application of the prosecution, impose any sentence that could have been imposed if the passing of sentence had not been suspended.

1996, c. 31, s. 39.10; 2019, c. 8, s. 15.

### Limitation period

**39.92** Proceedings by way of summary conviction in respect of an offence may be commenced not later than five years after the day on which the offence was committed.

1996, c. 31, s. 39.11; 2019, c. 8, s. 16.

### Procedure

**39.93 (1)** In addition to the procedures set out in the *Criminal Code* for commencing a proceeding, proceedings in respect of any offence prescribed by the regulations may be commenced by an enforcement officer

- (a)** completing a ticket that consists of a summons portion and an information portion;
- (b)** delivering the summons portion to the accused or mailing it to the accused at the accused's latest known address; and
- (c)** filing the information portion with a court of competent jurisdiction before the summons portion has been delivered or mailed or as soon as is practicable afterward.

### Content of ticket

**(2)** The summons and information portions of the ticket must

- (a)** set out a description of the offence and the time and place of its alleged commission;
- (b)** include a statement, signed by the enforcement officer who completes the ticket, that the officer has reasonable grounds to believe that the accused committed the offence;
- (c)** set out the amount of the fine prescribed by the regulations for the offence and the manner in which and period within which it may be paid;
- (d)** include a statement that if the accused pays the fine within the period set out in the ticket, a conviction will be entered and recorded against the accused; and

### Prononcé de la peine

**(2)** Sur demande de la poursuite, le tribunal peut, lorsque la personne visée par l'ordonnance ne se conforme pas aux modalités de celle-ci ou est déclarée coupable d'une autre infraction à la présente loi dans les trois ans qui suivent la date de l'ordonnance, prononcer la peine qui aurait pu être infligée s'il n'y avait pas eu sur-sis.

1996, ch. 31, art. 39.10; 2019, ch. 8, art. 15.

### Prescription

**39.92** Les poursuites visant une infraction punissable sur déclaration de culpabilité par procédure sommaire se prescrivent par cinq ans à compter de la date de la perpétration de l'infraction.

1996, ch. 31, art. 39.11; 2019, ch. 8, art. 16.

### Procédure

**39.93 (1)** En plus des modes prévus au *Code criminel*, la poursuite des infractions précisées par règlement peut être intentée de la façon suivante :

- a)** l'agent de l'autorité remplit les deux parties — sommation et dénonciation — du formulaire de contravention;
- b)** il remet la sommation à l'accusé ou la lui envoie par la poste à sa dernière adresse connue;
- c)** avant la remise ou l'envoi de la sommation, ou dès que possible par la suite, il dépose la dénonciation auprès du tribunal compétent.

### Contenu du formulaire de contravention

**(2)** Les deux parties du formulaire de contravention comportent les éléments suivants :

- a)** définition de l'infraction et indication du lieu et du moment où elle aurait été commise;
- b)** déclaration signée dans laquelle l'agent de l'autorité atteste qu'il a des motifs raisonnables de croire que l'accusé a commis l'infraction;
- c)** indication du montant de l'amende réglementaire pour l'infraction, ainsi que mention du mode et du délai de paiement;
- d)** avertissement précisant que, en cas de paiement de l'amende dans le délai fixé, une déclaration de culpabilité sera inscrite au dossier de l'accusé;



(e) include a statement that if the accused wishes to plead not guilty or for any other reason fails to pay the fine within the period set out in the ticket, the accused must appear in the court on the day and at the time set out in the ticket.

#### Notice of forfeiture

(3) Where a thing is seized under this Act and proceedings relating to it are commenced by way of the ticketing procedure, the enforcement officer who completes the ticket shall give written notice to the accused that, if the accused pays the fine prescribed by the regulations within the period set out in the ticket, the thing, or any proceeds of its disposition, will be immediately forfeited to Her Majesty.

#### Consequences of payment

(4) Where an accused to whom the summons portion of a ticket is delivered or mailed pays the prescribed fine within the period set out in the ticket,

(a) the payment constitutes a plea of guilty to the offence and a conviction must be entered against the accused and no further action may be taken against the accused in respect of that offence; and

(b) notwithstanding section 39.3, any thing seized from the accused under this Act that relates to the offence, or any proceeds of its disposition, are forfeited to

(i) Her Majesty in right of Canada, if the thing was seized by an enforcement officer employed in the federal public administration, or

(ii) Her Majesty in right of a province, if the thing was seized by an enforcement officer employed by the government of that province.

#### Regulations

(5) The Governor in Council may make regulations prescribing

(a) offences in respect of which this section applies and the manner in which the offences are to be described in tickets; and

(b) the amount of the fine for a prescribed offence, but the amount may not exceed \$2,000.

1996, c. 31, s. 39.12; 2003, c. 22, s. 224(E); 2019, c. 8, s. 17.

(e) mention du fait que, en cas de plaider de non-culpabilité ou de non-paiement de l'amende dans le délai fixé, l'accusé est tenu de comparaître au tribunal, aux lieu, jour et heure indiqués.

#### Préavis de confiscation

(3) En cas de poursuite par remise d'un formulaire de contravention, l'agent de l'autorité est tenu de remettre à l'accusé un avis précisant que, sur paiement de l'amende réglementaire dans le délai fixé, les objets saisis, ou le produit de leur aliénation, seront immédiatement confisqués au profit de Sa Majesté du chef du Canada.

#### Effet du paiement

(4) Lorsque, après réception de la sommation, l'accusé paie l'amende réglementaire dans le délai fixé :

a) d'une part, le paiement constitue un plaider de culpabilité à l'égard de l'infraction et une déclaration de culpabilité est inscrite à son dossier, aucune autre poursuite ne pouvant dès lors être intentée contre lui à cet égard;

b) d'autre part, malgré l'article 39.3, les objets saisis entre ses mains en rapport avec l'infraction, ou le produit de leur aliénation, sont confisqués au profit de Sa Majesté du chef du Canada ou d'une province, selon que l'agent de l'autorité saisissant est fonctionnaire de l'administration publique fédérale ou fonctionnaire de la province en question.

#### Règlements

(5) Le gouverneur en conseil peut, par règlement, déterminer :

a) les infractions visées par le présent article ainsi que leur désignation dans le formulaire de contravention;

b) le montant de l'amende afférente à concurrence de 2 000 \$.

1996, ch. 31, art. 39.12; 2003, ch. 22, art. 224(A); 2019, ch. 8, art. 17.

## PART III

# Powers, Duties and Functions of the Minister

## General

### Powers, duties and functions of the Minister

**40 (1)** As the Minister responsible for oceans, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to the policies and programs of the Government of Canada respecting oceans.

### Encouragement of activities

**(2)** For the purpose of subsection (1), the Minister shall encourage activities necessary to foster understanding, management and sustainable development of oceans and marine resources and the provision of coast guard and hydrographic services to ensure the facilitation of marine trade, commerce and safety in collaboration with other ministers of the Government of Canada.

## Coast Guard Services

### Coast guard services

**41 (1)** As the Minister responsible for coast guard services, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to

**(a)** services for the safe, economical and efficient movement of ships in Canadian waters through the provision of

- (i)** aids to navigation systems and services,
- (ii)** marine communications and traffic management services,
- (iii)** ice breaking and ice management services, and
- (iv)** channel maintenance;

**(b)** the marine component of the federal search and rescue program;

## PARTIE III

# Attributions du ministre

## Dispositions générales

### Attributions

**40 (1)** Le ministre étant responsable des océans, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux et liés à des orientations, objectifs et programmes du gouvernement fédéral touchant les océans.

### Activités

**(2)** Dans l'exercice de ses attributions et en collaboration avec d'autres ministres fédéraux, il encourage les activités propres à promouvoir la connaissance, la gestion et la préservation des océans et des ressources marines, dans la perspective du développement durable, et fournit des services de garde côtière et des services hydrographiques destinés à assurer la sécurité de la navigation et à faciliter le commerce maritime.

## Garde côtière

### Responsabilité du ministre

**41 (1)** Le ministre étant responsable des services de garde côtière, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux concernant :

**a)** les services destinés à assurer la sécurité, la rentabilité et l'efficacité du déplacement des navires dans les eaux canadiennes par la fourniture :

- (i)** de systèmes et de services d'aide à la navigation,
- (ii)** de services de communication maritime et de gestion du trafic maritime,
- (iii)** de services de brise-glace et de surveillance des glaces,
- (iv)** de services d'entretien des chenaux;

**b)** le volet maritime du programme fédéral de recherche et de sauvetage;

(c) response to wrecks and hazardous or dilapidated ships;

(d) marine pollution response; and

(e) the support of departments, boards and agencies of the Government of Canada through the provision of ships, aircraft and other marine services.

#### Cost effective

(2) The Minister shall ensure that the services referred to in subparagraphs (1)(a)(i) to (iv) are provided in a cost effective manner.

1996, c. 31, s. 41; 1999, c. 31, s. 170(F); 2005, c. 29, s. 36; 2019, c. 1, s. 133.

c) l'intervention à l'égard d'épaves et de navires dangereux ou délabrés;

d) l'intervention environnementale en milieu marin;

e) les services de navigation maritime et aérienne et les autres services maritimes fournis aux ministères et organismes fédéraux.

#### Obligation du ministre

(2) Le ministre devra s'assurer que les services mentionnés aux sous-alinéas (1)a)(i) à (iv) sont dispensés de la manière la plus économique et la plus judicieuse possible.

1996, ch. 31, art. 41; 1999, ch. 31, art. 170(F); 2005, ch. 29, art. 36; 2019, ch. 1, art. 133.

## Marine Sciences

#### Functions

42 In exercising the powers and performing the duties and functions assigned by paragraph 4(1)(c) of the *Department of Fisheries and Oceans Act*, the Minister may

(a) collect data for the purpose of understanding oceans and their living resources and ecosystems;

(b) conduct hydrographic and oceanographic surveys of Canadian and other waters;

(c) conduct marine scientific surveys relating to fisheries resources and their supporting habitat and ecosystems;

(d) conduct basic and applied research related to hydrography, oceanography and other marine sciences, including the study of fish and their supporting habitat and ecosystems;

(e) carry out investigations for the purpose of understanding oceans and their living resources and ecosystems;

(f) prepare and publish data, reports, statistics, charts, maps, plans, sections and other documents;

(g) authorize the distribution or sale of data, reports, statistics, charts, maps, plans, sections and other documents;

(h) prepare in collaboration with the Minister of Foreign Affairs, publish and authorize the distribution or sale of charts delineating, consistently with the nature and scale of the charts, all or part of the territorial sea of Canada, the contiguous zone of Canada, the exclusive economic zone of Canada and the fishing zones of Canada and adjacent waters;

## Sciences de la mer

#### Pouvoirs du ministre

42 Dans le cadre de ses attributions au titre de l'alinéa 4(1)c) de la *Loi sur le ministère des Pêches et des Océans*, le ministre est investi des pouvoirs suivants :

a) assurer la collecte de données en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes;

b) effectuer des levés hydrographiques et océanographiques dans les eaux canadiennes et autres;

c) effectuer des levés scientifiques concernant les ressources halieutiques, leur habitat et les écosystèmes;

d) entreprendre des recherches fondamentales et appliquées dans les domaines de l'hydrographie, de l'océanographie et des autres sciences de la mer, y compris l'étude des poissons, de leur habitat et des écosystèmes;

e) procéder à des enquêtes en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes;

f) établir et publier des données, rapports, statistiques, cartes, plans, sections et autres documents;

g) autoriser la distribution ou la vente de données, rapports, statistiques, cartes, plans, sections et autres documents;

h) dresser, en collaboration avec le ministre des Affaires étrangères, et publier des cartes marines montrant, en fonction de leur échelle et de leur finalité, tout ou partie de la mer territoriale, de la zone contiguë, de la zone économique exclusive et des zones de

- (i) participate in ocean technology development; and
- (j) conduct studies to obtain traditional ecological knowledge for the purpose of understanding oceans and their living resources and ecosystems.

### Powers

**43** Subject to section 4 of the *Department of Fisheries and Oceans Act* respecting the powers, duties and functions of the Minister in relation to matters mentioned in that section over which Parliament has jurisdiction, the Minister

- (a) is responsible for coordinating, promoting and recommending national policies and programs with respect to fisheries science, hydrography, oceanography and other marine sciences;
- (b) in carrying out his or her responsibilities under this section, may
  - (i) conduct or cooperate with persons conducting applied and basic research programs and investigations and economic studies for the purpose of understanding oceans and their living resources and ecosystems, and
  - (ii) for that purpose maintain and operate ships, research institutes, laboratories and other facilities for research, surveying and monitoring for the purpose of understanding oceans and their living resources and ecosystems; and
- (c) may provide marine scientific advice, services and support to the Government of Canada and, on behalf of the Government, to the governments of the provinces, to other states, to international organizations and to other persons.

### Marine scientific research by foreign ships

**44** The Minister may

- (a) request the Minister of Foreign Affairs to attach to a consent of the Minister of Foreign Affairs under paragraph 3(2)(c) of the *Coasting Trade Act* a condition that the foreign ship or non-duty paid ship supply the Minister with the results of the marine scientific research conducted by that ship in waters that form part of Canada or in which Canada has sovereign rights under international law; and

pêche du Canada, ainsi que des eaux adjacentes, et en autoriser la distribution ou la vente;

- i) participer à l'avancement de la technologie marine;
- j) effectuer des études pour mettre à profit les connaissances écologiques traditionnelles en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes.

### Orientations, objectifs et programmes

**43** Dans le cadre fixé pour l'exercice de ses attributions par l'article 4 de la *Loi sur le ministère des Pêches et des Océans*, il incombe au ministre de recommander, de promouvoir et de coordonner les orientations, les objectifs et les programmes du gouvernement fédéral en ce qui touche les pêches, l'hydrographie, l'océanographie et les autres sciences de la mer. À cette fin, il peut exécuter — ou collaborer avec des personnes qui exécutent — des programmes de recherche fondamentale et appliquée, ainsi que des analyses et des études économiques, en vue d'une meilleure connaissance des océans, de leurs ressources biologiques et de leurs écosystèmes. Il peut à cet effet établir ou maintenir — notamment à bord de navires — des instituts de recherche, des laboratoires et d'autres installations de recherche, d'étude et de contrôle, et veiller à leur fonctionnement. Il peut, de plus, fournir conseils, services et soutien dans le domaine des sciences de la mer au gouvernement du Canada et, au nom de celui-ci, aux gouvernements des provinces, aux autres États, aux organismes internationaux et à toute autre personne.

### Recherche scientifique : navires étrangers

**44** Le ministre peut demander au ministre des Affaires étrangères d'assujettir l'octroi de la licence visée à l'alinéa 3(2)c) de la *Loi sur le cabotage* à la condition que lui soient fournis, pour le compte du navire étranger ou non dédouané en cause, les résultats des recherches océanographiques auxquelles a servi ce dernier dans les eaux faisant partie du Canada ou sur lesquelles le droit international reconnaît à celui-ci des droits souverains. Il peut en outre établir, à l'intention des navires étrangers et non dédouanés, des directives compatibles avec les obligations internationales du Canada au sujet de la recherche océanographique dans ces mêmes zones maritimes.

(b) establish guidelines, not inconsistent with Canada's international obligations, for use by foreign ships and non-duty paid ships in conducting marine scientific research in waters that form part of Canada or in which Canada has sovereign rights under international law.

#### Minister's powers

**45** As the Minister responsible for hydrographic services, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to

(a) setting standards and establishing guidelines for use by hydrographers and others in collecting data and preparing charts on behalf of the Minister; and

(b) providing hydrographic advice, services and support to the Government of Canada and, on behalf of the Government, to the governments of the provinces, to other states, to international organizations and to other persons.

#### Entry on lands

**46** A hydrographer may, for the purpose of conducting a hydrographic survey on behalf of the Minister, enter on or pass over the lands of any person, but shall take all reasonable precautions to avoid causing any damage in doing so.

## Fees

#### Fees for services or use of facilities

**47 (1)** The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix the fees to be paid for a service or the use of a facility provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

#### Amount not to exceed cost

(2) Fees for a service or the use of a facility that are fixed under subsection (1) may not exceed the cost to Her Majesty in right of Canada of providing the service or the use of the facility.

#### Fees for products, rights and privileges

**48** The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix fees in respect of products, rights and privileges provided under this Act by the Minister, the Department

#### Services hydrographiques

**45** Le ministre responsable des services hydrographiques, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux concernant :

a) l'établissement de normes et de directives, à l'intention notamment des hydrographes, relativement à la collecte des données et à la préparation des cartes sous l'autorité du ministre;

b) la prestation de conseils et de services en matière hydrographique au gouvernement du Canada et, au nom de celui-ci, aux gouvernements des provinces, aux autres États, aux organismes internationaux et à toute autre personne.

#### Propriété privée

**46** Tout hydrographe peut, afin d'effectuer un levé hydrographique sous l'autorité du ministre, pénétrer sur la propriété de qui que ce soit ou la traverser; il prend toutefois toutes les précautions voulues pour éviter d'y causer des dommages.

## Facturation

#### Facturation des services et installations

**47 (1)** Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de services ou d'installations au titre de la présente loi par lui-même ou le ministre, ou tout organisme fédéral dont il est, du moins en partie, responsable.

#### Plafonnement

(2) Les prix fixés dans le cadre du paragraphe (1) ne peuvent excéder les coûts supportés par Sa Majesté du chef du Canada pour la fourniture des services ou des installations.

#### Facturation des produits, droits et avantages

**48** Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de produits ou l'attribution de droits ou d'avantages au titre de la présente loi par lui-même ou le ministre ou

or any board or agency of the Government of Canada for which the Minister has responsibility.

#### **Fees in respect of regulatory processes, etc.**

**49 (1)** The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix fees in respect of regulatory processes or approvals provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

#### **Amount**

**(2)** Fees that are fixed under subsection (1) shall in the aggregate not exceed an amount sufficient to compensate Her Majesty in right of Canada for any reasonable outlays incurred by Her Majesty for the purpose of providing the regulatory processes or approvals.

#### **Consultation**

**50 (1)** Before fixing a fee under this Act, the Minister shall consult with such persons or bodies as the Minister considers to be interested in the matter.

#### **Publication**

**(2)** The Minister shall, within 30 days after fixing a fee under this Act, publish the fee in the *Canada Gazette* and by such appropriate electronic or other means that the Treasury Board may authorize by regulation.

#### **Reference to Scrutiny Committee**

**(3)** Any fee fixed under this Act shall stand referred to the Committee referred to in section 19 of the *Statutory Instruments Act* to be reviewed and scrutinized as if it were a statutory instrument.

#### **Power to make regulations**

**51** The Treasury Board may make regulations for the purposes of section 47, 48, 49 or 50.

#### **Review**

**52 (1)** The administration of this Act shall, within three years after the coming into force of this section, be reviewed by the Standing Committee on Fisheries and Oceans.

#### **Report to Parliament**

**(2)** The Committee shall undertake a comprehensive review of the provisions and operation of this Act,

tout organisme fédéral dont il est, du moins en partie, responsable.

#### **Facturation des procédés ou autorisations réglementaires**

**49 (1)** Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de procédés réglementaires ou l'attribution d'autorisations réglementaires au titre de la présente loi par lui-même ou le ministère, ou tout organisme fédéral dont il est, du moins en partie, responsable.

#### **Montant**

**(2)** Les prix fixés dans le cadre du paragraphe (1) ne peuvent dépasser, dans l'ensemble, un montant suffisant pour indemniser Sa Majesté du chef du Canada des dépenses entraînées pour elle par la fourniture des procédés réglementaires ou l'attribution des autorisations réglementaires.

#### **Consultations**

**50 (1)** Avant de fixer un prix dans le cadre de la présente loi, le ministre consulte les personnes de droit public et de droit privé qu'il juge intéressées.

#### **Publication**

**(2)** Dans les trente jours suivant la fixation d'un prix dans le cadre de la présente loi, le ministre publie celui-ci dans la *Gazette du Canada* et par tout autre moyen indiqué, notamment électronique, que le Conseil du Trésor peut, par règlement, autoriser.

#### **Renvoi en comité**

**(3)** Le comité visé à l'article 19 de la *Loi sur les textes réglementaires* est saisi d'office des prix fixés dans le cadre de la présente loi pour que ceux-ci fassent l'objet de l'étude et du contrôle prévus pour les textes réglementaires.

#### **Pouvoir réglementaire**

**51** Le Conseil du Trésor peut prendre des règlements d'application des articles 47 à 50.

#### **Examen**

**52 (1)** Le Comité permanent des pêches et des océans est chargé de l'examen de l'application de la présente loi, dans les trois ans suivant l'entrée en vigueur du présent article.

#### **Rapport au Parlement**

**(2)** Le comité examine à fond les dispositions de la présente loi ainsi que les conséquences de son application en

including the consequences of its implementation, and shall, within a year after the review is undertaken or within such further time as the House of Commons may authorize, submit a report to Parliament thereon including a statement of any changes to this Act or its administration that the Committee would recommend.

### Regulations

**52.1** The Governor in Council may, on the recommendation of the Minister, make regulations for carrying out the purposes and provisions of this Act and, in particular, but without restricting the generality of the foregoing, may make regulations

- (a) prescribing marine environmental quality requirements and standards;
- (b) respecting the powers and duties of persons designated by the Minister as enforcement officers; and
- (c) respecting the implementation of provisions of agreements made under this Act.

## Conditional Amendments

**53** [Amendments]

## Repeals

**54 and 55** [Repeals]

## Related Amendments

**56 to 108** [Amendments]

## Coming into Force

### Coming into force

**\*109 This Act or any of its provisions, other than section 53, comes into force on a day or days to be fixed by order of the Governor in Council.**

\* [Note: Act, except section 53, in force January 31, 1997, see SI/97-21.]

vue de la présentation, dans un délai d'un an à compter du début de l'examen ou tel délai plus long autorisé par la Chambre des communes, d'un rapport au Parlement où seront consignées ses conclusions ainsi que ses recommandations, s'il y a lieu, quant aux modifications de la présente loi ou des modalités d'application de celle-ci qui seraient souhaitables.

### Règlements

**52.1** Sur la recommandation du ministre, le gouverneur en conseil peut, par règlement, prendre les mesures nécessaires à l'application de la présente loi, notamment :

- a) établir des exigences et des normes concernant la qualité du milieu marin;
- b) régir l'exercice des attributions conférées aux agents de l'autorité désignés par le ministre;
- c) mettre en œuvre les dispositions des accords conclus en vertu de la présente loi.

## Modifications conditionnelles

**53** [Modifications]

## Abrogations

**54 et 55** [Abrogations]

## Modifications corrélatives

**56 à 108** [Modifications]

## Entrée en vigueur

### Entrée en vigueur

**\*109 Exception faite de l'article 53, la présente loi ou telle de ses dispositions entre en vigueur à la date ou aux dates fixées par décret.**

\* [Note : Loi, sauf article 53, en vigueur le 31 janvier 1997, voir TR/97-21.]

## RELATED PROVISIONS

— 2019, c. 8, s. 18

**18** Section 39.11 of the *Oceans Act*, as it read immediately before the day on which section 16 of this Act comes into force, continues to apply in respect of an offence that was committed before that day.

## DISPOSITIONS CONNEXES

— 2019, ch. 8, art. 18

**18** L'article 39.11 de la *Loi sur les océans*, dans sa version antérieure à la date d'entrée en vigueur de l'article 16 de la présente loi, continue de s'appliquer aux infractions perpétrées avant cette date.



# APPENDIX 3

2018 Document  
Used by PNM/PDP  
(Combined THA) To  
Highlight  
Differences  
Between 2016 and  
2018 Drafts

# Constitution Amendment Bill

Core Issues considered essential for inclusion in  
the Legislation by the Tobago population.



**AUTONOMY MEETINGS**

**JUNE 21<sup>st</sup>, 2018 | 5:00 p.m.**

Roxborough Secondary School

**JUNE 26<sup>th</sup>, 2018 | 5:00 p.m.**

Works Conference Room

Tobago's Essential Requirements	Government's Constitution Amendment Bill	Tobago's Submission	Comments
<ul style="list-style-type: none"> <li>Legislative Framework for Equality</li> </ul>	<p>1A. There shall be equality of status between the Island of Trinidad and the Island of Tobago within the sovereign democratic State of Trinidad and Tobago and the Island of Tobago shall no longer carry the designation of a ward.</p>	<p>There shall be equality of status between the Island of Trinidad and the Island of Tobago within the sovereign democratic State of Trinidad and Tobago and the Island of Tobago shall no longer carry the designation of a ward.</p>	<p>Essentially the same. Satisfactory inclusion.</p>
<ul style="list-style-type: none"> <li>Definition of the boundaries of each island</li> </ul>	<p>Tobago's proposal not included</p>	<p>Amendment of Section 4 (1) of Constitution to define the nation of Trinidad and Tobago; Definition of Trinidad, and Definition of Tobago.</p>	<p>The proposal for delineation of the islands that constitute the nation was not addressed by the Bill</p>
<ul style="list-style-type: none"> <li>Jurisdiction and control over economic resources</li> </ul>	<p>141 4 (11) A(7). A Tobago Statute shall have effect in Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and such area of the archipelagic waters of Trinidad and Tobago, including any islands, the seabed and the subsoil, that lies within eleven miles from the low water-mark of Tobago.</p>	<p>Tobago shall comprise the island of Tobago, Little Tobago, St. Giles Island, Marble Island, Goat Island, Sisters Island and other off-shore islands and the archipelagic waters lying landward of the established straight base-lines the 12-mile territorial sea measured seawards from the said base-lines as well as the inland waters equidistant between the island of Trinidad and the island of Tobago and to the extent of the territorial sea of Trinidad and Tobago and the superjacent air-space above these aforementioned maritime areas and over the land-space.</p>	<p>Does not satisfy the requirements of the Forum.</p>
<ul style="list-style-type: none"> <li>Law-making authority</li> </ul>	<p>141A. There shall be a Tobago Legislature which shall consist of the President, the House of Assembly and the People's House.</p>	<p>141A. (1) There shall be a Tobago Legislature which shall consist of the President the House of Assembly and a People's House the composition of which People's House shall be determined by the House of Assembly.</p>	<p>The composition of the People's House has been since determined.</p>
<ul style="list-style-type: none"> <li>Capability to Borrow</li> </ul>	<p>141A1. The Tobago Executive Council shall have the power to borrow locally and internationally such sums as the Tobago.</p>	<p>The Executive Council shall have the power to borrow locally and internationally such sums as the Executive Council considers necessary for the discharge of its functions.</p>	<p>Tobago Executive Council may borrow locally and internationally.</p>
<ul style="list-style-type: none"> <li>Fiscal Measures taxation/Incentives.</li> </ul>	<p>Not expressly stipulated.</p>	<p>Not expressly stipulated.</p>	<p>To be dealt with in legislation made by the Tobago Legislature</p>
<ul style="list-style-type: none"> <li>Removal of Cabinet dominance</li> </ul>	<p>There shall be Executive Council for Tobago which shall have the general direction and control of the Tobago Island Government and shall be collectively responsible therefore to the Tobago Legislature.</p>	<p>There shall be an Executive Council for Tobago which shall have the general direction and control of the Tobago Island Government and shall be collectively responsible therefor to the Tobago Legislature.</p>	<p>Appropriate authority over Tobago matters</p>
<ul style="list-style-type: none"> <li>Framework for wider participation of society in decision making</li> </ul>	<p>141U. The People's House shall consist of thirteen members who shall be elected as follows: (a) one member elected from each of the seven Parishes in Tobago; and (b) one member elected to represent each of the six sectors specified in the Fifth Schedule in such manner as may be prescribed by Parliament.</p>	<p>A People's House the composition of which People's House shall be determined by the House of Assembly</p>	<p>Parliamentary Council required composition for insertion in the Bill Innovative provisions have engendered intense discussions.</p>
<ul style="list-style-type: none"> <li>Financial arrangements</li> </ul>	<p>There shall be established a Fiscal Review Commission, which shall comprise: (a) the Chairman of the Fiscal Review Commission, who shall be appointed by the President in his discretion, after consultation with the Chief Secretary and the Prime Minister; 141 AE. Parliament shall appropriate for the use of the House of Assembly for any financial year no less than eight percent of the total sum appropriated by Parliament in that financial year.</p>	<p>There shall be established a Fiscal Review Commission which Commission shall comprise five members two of whom shall be appointed by the Executive Council and two appointed by the Cabinet. The fifth member shall be the Chairman of the Fiscal Review Commission who shall be appointed by the President in his discretion after consultation with the Chief Secretary and the Prime Minister Parliament shall appropriate for the use of the House of Assembly for any financial year no less than eight percent (8%) of the total sum appropriated by Parliament allocation in that financial year.</p>	<p>Included, but strong support required in parliament</p>