



CANADA SHIPPING ACT 2001 (CSA 2001)

PUBLIC CONSULTATION

DISCUSSION PAPER - 2016

PROPOSED *ENVIRONMENTAL RESPONSE REGULATIONS*

CANADIAN MARINE ADVISORY COUNCIL (CMAC)

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This Discussion Paper has been prepared for comment



Transport Transports
Canada Canada

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Responsible Authority

The Executive Director, Navigation Safety & Environmental Programs, is responsible for this document.

Approval

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Executive Director, Navigation Safety & Environmental Programs

Date:



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Proposed *Environmental Response Regulations*

Introduction

The requirements for pollution prevention and response are currently addressed by Part 8 of the *Canada Shipping Act, 2001*, the *Response Organizations and Oil Handling Facilities Regulations* (1995) and the *Environmental Response Arrangements Regulations* (2008) made pursuant to the *Canada Shipping Act, 2001 (CSA 2001)* supported by two Technical Publications: TP 12401 (1995) and TP 12402 (1995).

The development of the proposed regulations will be conducted in two phases. The first phase, which is this discussion paper, will focus on prescribed oil handling facilities and vessels and their requirements. The second phase, which will be done at a later date, will deal with the requirements for Response Organizations.

This discussion paper outlines the proposed framework for the prescribed classes of vessels and oil handling facilities in the development of the proposed *Environmental Response Regulations* and the *Environmental Response Standards*. This paper will focus on those matters relating to the pollution prevention and response activities for prescribed classes of oil handling facilities that are engaged in the loading or unloading of oil to or from a vessel including arrangements with a Response Organization. It will also describe what type of vessels are a prescribed class (including those excluded) as it relates to having an arrangement with a Response Organization.



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Many of the requirements found in this paper are in place today so to help with the review, the sections have been highlighted as to whether the requirement is new, revised or unchanged.

In addition, below are areas that may be of particular interest:

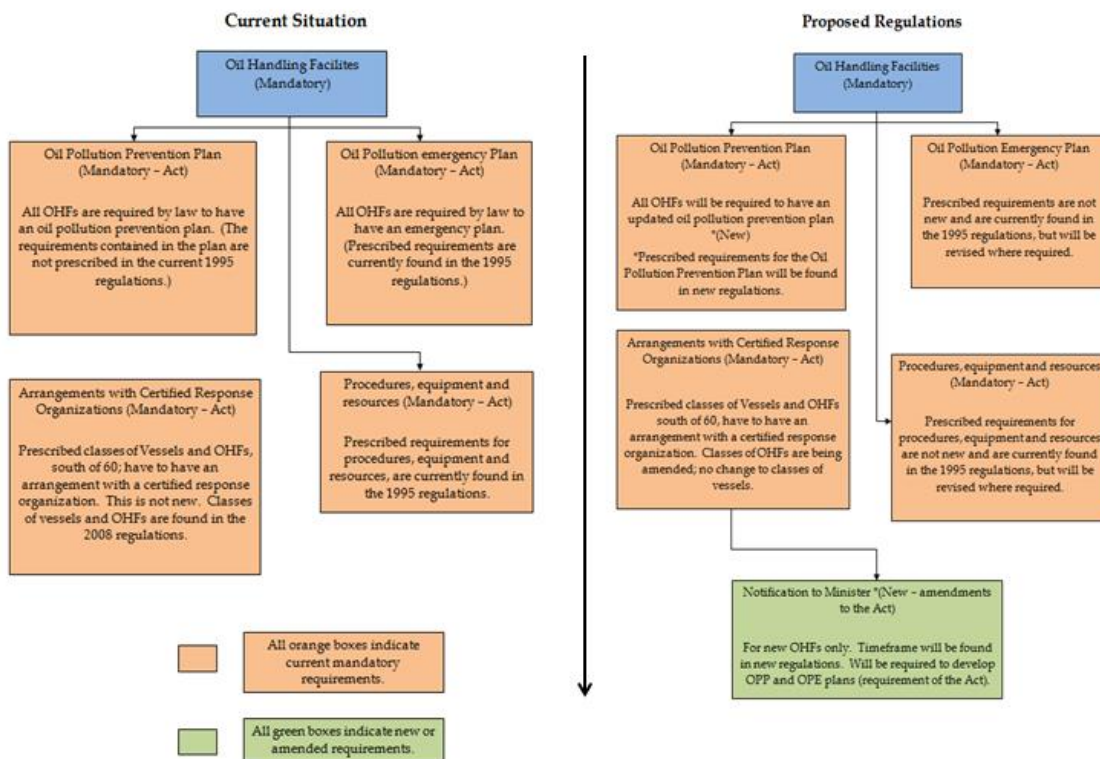
- Classes of Oil Handling Facilities – Over the course of the past several years there has been some confusion surrounding what exactly constituted a prescribed class of oil handling facility for the purposes of Part 8 of the CSA 2001. To add clarity, this area is revised.
- The requirement to have an oil pollution prevention plan (OPPP) has been in the CSA 2001 for quite some time (therefore not new) however, the prescribed requirements were missing in regulation. This paper will also describe those prescribed requirements.
- The section dealing with the oil pollution emergency plan (OPEP) and the procedures, equipment and resources exist today under the 1995 regulations. These requirements have been reviewed and revised where necessary. Any new requirements are highlighted with “new” in the discussion paper.
- In December 2014, Bill C-3, *Safeguarding Canada’s Seas and Skies* received Royal Assent. As part of the changes to the *Canada Shipping Act, 2001* included the strengthening the requirements for proposed and existing oil handling facilities. Many of these changes will come into force once the regulations are amended. Those new provisions to the Act can be found at the end of the CSA 2001 under the section entitled “Amendments not in Force”.



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This discussion paper also includes any new requirements (such as notifying the Minister of new operations) needed in order for these new provisions to come into force.

The chart below provides a high level view of the current and proposed regulatory framework.



In addition to the changes made to the CSA 2001 in Dec 2014 included the ability to apply the *Administrative Monetary Penalties and Notices Regulations* (AMPs) to Part 8 of the CSA 2001 and its associated regulations. This discussion paper layouts the framework that will be used when establishing the AMP scheme for Part 8 and the proposed ER Regulations once the AMP regulations are amended.



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DISCUSSION

This discussion paper is a proposed regulatory structure for the *Environmental Response Regulations*. This is not a draft regulation nor is it intended to be. It is simply a framework developed to accommodate consultations on the regulatory intent of the Act.

The discussion paper is divided into three Parts.

Part 1 - General Provisions: This Part provides several definitions for explanatory purposes.

Part 2 - Oil Handling Facilities: This Part describes:

- the different classes of oil handling facilities;
- the arrangements with Response Organizations;
- the requirements for oil pollution prevention and emergency plans;
- the procedures, equipment and resources that are required for immediate use; and
- the submission of plans.

Part 3 – Vessels: This Part describes the prescribed classes of vessels for the purposes of Part 8 of the *Canada Shipping Act, 2001* and the requirement for having an arrangement with a Response Organization.



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This paper also addresses the proposed Consequential amendments to the *Administrative Monetary Penalties and Notices Regulations* that will be applied to Part 8 of the CSA 2001 as based on the proposed regulation.

The wording in this discussion paper is being used to articulate the intent of the regulatory provisions of the Act. It is not legalistic in nature nor is it consistent with regulatory drafting. It is not final and is not what will be seen once the text undergoes legislative drafting. Consequently, comments and submissions should be focused on the intent.

Your comments should be forwarded to Joanne Sherwood whose coordinates appear on the first page of this discussion paper.

NEXT STEPS

Upon conclusion of these consultations, the framework may be amended taking into consideration comments received, and will be sent to the Regulations Unit of Department of Justice (Transport Canada) for legal drafting of the proposed *Environmental Response Regulations* and consequential amendments to the *Administrative Monetary Penalties and Notices Regulations*.



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PROPOSED *ENVIRONMENTAL RESPONSE REGULATIONS*

PART 1

GENERAL PROVISIONS

Interpretation

1. For the purposes of this discussion paper, the following are the proposed definitions to help explain the meaning of terms that are used:

“Act” means the *Canada Shipping Act, 2001. (Loi)*

“Environmental Response Standards” – means the standards set out in the Transport Canada document TP 14909, as amended from time to time. (Normes d’intervention environnementale)

“Oil tanker” means a vessel constructed or adapted primarily to carry oil in bulk in its cargo spaces and includes a combination carrier, an NLS tanker and a gas carrier that is carrying a cargo or part cargo of oil in bulk. (*pétrolier*)

“On scene” means on site at an oil pollution incident. (*sur place*) – (NEW)



PART 2

OIL HANDLING FACILITIES

Prescribed Classes of Oil Handling Facilities (revised)

Over the course of the past several years, there has been some confusion surrounding what exactly constituted a prescribed class of oil handling facilities for the purposes of Part 8 of the CSA 2001. To add clarity to this, the section below proposes the following:

1. The following are classes of oil handling facilities for persons proposing to operate an oil handling facility and for operators of oil handling facilities:

- (a) A facility that will be or is located at or south of 60 degrees north latitude;
- (b) A facility that will be or is located north of 60 degrees north latitude;

and categorized by their maximum transfer rate per cubic meters per hour, in respect of oil that is loaded or unloaded to or from a vessel:

OHF Level	Maximum Oil Transfer Rate (m ³)
Level 1	150 m ³ /h or less
Level 2	750 m ³ /h or less
Level 3	2 000 m ³ /h or less
Level 4	More than 2 000 m ³ /h

(the above OHF levels are unchanged)



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(New) In addition, a prescribed class of oil handling facility is a facility that loads or unloads oil to or from a prescribed vessel referred to in Part 3 of this discussion paper.

For greater clarity, a prescribed class of oil handling facility does not include the following:

- Facilities on location and engaged in the exploration or drilling for, or the production of, conservation or processing of, oil or gas in the area described in paragraph 3(a) or (b) of the *Canada Oil and Gas Operations Act*.

Arrangements with Response Organizations (unchanged)

2. Prescribed classes of oil handling facilities, that are located south of latitude 60° N are required to have an arrangement with a Response Organization.

Prescribed classes of oil handling facilities that are located north of latitude 60° N are not required to have an arrangement with a Response Organization.

Maximum Quantity of Oil (unchanged)

3. For the purposes of having an arrangement with a Response Organization, the prescribed maximum quantity of oil is 10,000 tonnes.



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Notification of Proposed Operations (new)

As mentioned in the Introduction section of this paper, this is a new requirement as part of the changes made to the CSA 2001 (section 167.1 not yet in force) following Bill C-3, *Safeguarding Canada's Seas and Skies*.

4. A person who proposes to operate an oil handling facility must notify the Minister at least 180 days before the day on which the facility begins loading or unloading oil to or from the facility.



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Oil Pollution Prevention Plan (new)

The requirement for an operator to have an oil pollution prevention plan on site has been in the CSA 2001 for quite sometime (therefore not new), however, the prescribed requirements as to what has to be in the plan were absent in regulation. Below are the proposed requirements for an oil pollution prevention plan.

5. The following are the prescribed requirements for an oil pollution prevention plan.

5.1 Transfer Operation:

(a) The plan must identify the position at the facility responsible for supervising the transfer operation and will be present during that time.

(b) The plan must identify the equipment used in the loading and unloading of oil to or from a vessel including information related to the maintenance and certification as per the required manufacturer's specifications.

(c) The plan must include procedures for personnel to follow prior to and during any transfer operation, capturing those requirements referred to in the *Vessel Pollution and Dangerous Chemicals Regulations*, Part 2, Subdivision 5, Section 38.



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5.2 Communication

The plan must describe how effective two-way communication will be provided and maintained, on a continuing basis, before and during the transfer operation.

The plan must include:

- a) the requirements found in the *Vessel Pollution and Dangerous Chemicals Regulations*, Part 2, Subdivision 5, Section 33; and
- b) explain other types of communication that will be used in the event that two-way voice communications should fail.

5.3 Lighting

The plan must describe the type of illumination that is provided where a transfer operation takes place between sunset and sunrise and is engaged in the transfer operation, capturing the requirements found in the *Vessel Pollution and Dangerous Chemicals Regulations*, Part 2, Subdivision 5, Section 34.

5.4 Transfer Conduit

The plan must include documentation that identifies that the transfer conduit meets the requirements set out in the *Vessel Pollution and Dangerous Chemicals Regulations*, Part 2, Subdivision 5, Section 35 and include the procedures that the operator of the OHF will take to reduce or stop a leak at the transfer conduit or connections.



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5.5 Duties of the Operator of the Oil Handling Facility

The plan must describe the duties of the operator as referred to in *Vessel Pollution and Dangerous Chemicals Regulations*, Part 2, Subdivision 5, Sections 38 and 39 and include any procedures the operator must follow in order to prevent a discharge of oil.

5.6 Training

The plan must describe the different types and frequency of training provided to the personnel that are engaged in the loading and unloading of a vessel and who must be prepared for the responsibilities that they might be requested to undertake to prevent an oil pollution incident. It is important to note that under section 168.2 of the CSA 2001, the marine safety inspector is entitled to request any information related to the OHFs for compliance purposes including such things as training records.

5.7 The operator of an oil handling facility must, in the plan, set out the procedures to investigate all incidents to determine the causes and contributing factors and to determine the action(s) needed to reduce the risk of reoccurrence.

5.8 Update and Review Procedures

The plan must include procedures for reviewing and updating the plan taking into account the requirements found in section 8 of this discussion paper.



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Oil Pollution Emergency Plan (revised)

The majority of these requirements below are currently in force today. Any new proposed items are noted with the word “new” below.

6. The prescribed requirements of an oil pollution emergency plan are set out below.

6.1 The plan must also demonstrate that the operator has the capability to comply with the requirements that are described in section 9.

6.2 The plan must include the following information:

(a) the procedures that the operator of the oil handling facility will follow in the event of an oil pollution incident;

(b) oil pollution scenarios that describe a response to a possible discharge of each type of oil product that is loaded and unloaded to or from a vessel at the facility. The scenarios must contain:



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(i) a description of the response in respect of the spill size determined in accordance with the following:

OHF Level	Minimum Size of an Oil Pollution Incident
Level 1	1 m ³
Level 2	5 m ³
Level 3	15 m ³
Level 4	50 m ³

(ii) the assumptions used in each scenario that are developed, must take into account, at a minimum, the factors found in the Environmental Response Standards.

(c) a description of the activities that will be carried out in the event of an oil pollution incident, taking into account the priorities found in the Environmental Response Standards, the order within and the time within which those activities will be carried out and the names of the persons responsible for carrying them out;



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It is important to note that the equipment and resources that are identified in the plan are not to include those equipment and resources of the Canadian Coast Guard.

(*d*) the types and quantity of equipment available for immediate use during a response to an oil pollution incident at the oil handling facility in respect of the spill size that is shown in 6.2(b)(i);

(*e*) the name of each person or organization including the location from which the equipment and resources will be obtained in the event of an oil pollution incident, and the manner in which the equipment and resources will be acquired and deployed on scene;

(*f*) the name or position of the persons who are authorized and responsible for ensuring that the response to an oil pollution incident at the oil handling facility is immediate, effective and sustained;

(*g*) the name of each person who has received oil pollution incident response training or any other training in relation to an oil pollution incident.

(*h*) a description of the training that the operator of the oil handling facility provides or plans to provide to its personnel and other individuals in preparation for the responsibilities that they might be requested to undertake (sometimes on short notice) in response to an oil pollution incident. It is important to note that under section 168.2 of the CSA 2001, the marine safety inspector is entitled to request any information related to the OHFs for compliance purposes including such things as training records.



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(i) **(revised)** - an oil pollution incident exercise program established to evaluate the effectiveness of all aspects of the procedures, equipment and resources that are identified in the oil pollution emergency plan, including exercises to be coordinated with vessels engaged in oil transfer operations (as well as vessels used for responding in the case of an oil pollution incident), Response Organizations, Transport Canada, the Canadian Coast Guard, as the case may be; **(new)** the exercise design and program should be sent to Transport Canada at least 30 days in advance of the exercise.

(j) a description of the measures that the operator of the oil handling facility will take, in accordance with federal and provincial health and safety regulations, to protect the health and safety of personnel and of other individuals who are involved, at the request of the operator, in responding to an oil pollution incident;

(k) a description of procedures for the updating of the oil pollution emergency plan taking into account the requirements in section 8 of this discussion paper; and

(l) **(Revised)** a description of the manner in which the operator of the oil handling facility plans to respond to an oil pollution incident that involves a quantity of oil that is greater than the spill size referred to in paragraph (d) above and that is scheduled to be loaded or unloaded to or from a vessel.

6.3 An oil handling facility's oil pollution emergency plan must take into account other contingency plans (such as, CCG, provincial, municipal) for the area that may impact with the facility's plan.



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6.4 **(NEW)** - The operator of an oil handling facility must, in the plan, set out the procedures that the operator will follow should an oil pollution incident occur, to investigate and determine the causes and contributing factors and actions needed to reduce the risk of reoccurrence.



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Oil Handling Facility North of 60 - Tiered Response Capability **(revised)**

7. Prescribed oil handling facilities that are located north of the sixtieth parallel of north latitude are not required to have an arrangement with a Response Organization due to the fact there is no TC certified Response Organization that services north of 60 degrees north latitude. Therefore, in addition to the requirements explained in this discussion paper, the text is revised to ensure that the necessary steps are taken to ensure the operator of the oil handling facility or a person who proposes to operate an oil handling facility is prepared to respond to a spill at its facility without the support of a Response Organization or the Canadian Coast Guard.

7.1 The oil pollution emergency plan must demonstrate that the operator of the oil handling facility has the procedures, equipment and resources immediately available to respond to a spill at least equal to the minimum spill size set out in 6.2(b)(i).

7.2 The plan must also include contingency measures to respond to a spill in excess of the minimum spill size mentioned in 7.1.

Plan Submission (revised)

8. Whether a person submitting a plan (OPPP or OPEP) for the first time as a new operation, or an operator of an existing oil handling facility of a prescribed class must submit an up to date or revised plan, to the Minister, and the plans must be submitted in a hard copy format unless otherwise instructed to do so.



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8.1 As part of the new changes to the Act, the timelines for submitting a new plan (new operation) can be found in subsection 167.2(1). The circumstances and timelines for submitting a revised plan to the Minister can be found in section 168.01.

8.2 The operator of an oil handling facility of a prescribed class must submit to the Minister, within the year from the date of the last submitted plan, an up to date oil pollution prevention plan and oil pollution emergency plan that takes into account such things as:

- (a) changes in legislation, in environmental factors affecting the loading and unloading of oil to or from a vessel or facility policies;
- (b) changes in personnel;
- (c) gaps identified in the plan following an oil pollution incident or an exercise;
or
- (d) changes in the business practices or operational procedures at the oil handling facility that could impact the loading or unloading of oil to or from a vessel.



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Procedures, Equipment and Resources for Immediate Use (revised)

The majority of these requirements below are currently in force today. Any new proposed items are noted as “new” below.

9. The procedures the operator must implement on site, in respect to an oil pollution incident arising out of the loading or unloading of oil to or from a vessel, include the following:

(a) the loading and unloading operation is to be shut down immediately and is not to be restarted in a manner that would interfere with the immediate, effective and sustained response to the oil pollution incident;

(b) **(NEW)** - reporting a discharge or anticipated discharge of oil capturing the requirements referred to in the *Vessel Pollution and Dangerous Chemicals Regulations*, Part 3, Section 133.

(c) the response to the oil pollution incident is to be managed in coordination with the Canadian Coast Guard, federal, provincial and other bodies responsible for, or involved in, the protection of the marine environment;

(d) in relation to the quantity of oil involved in the oil pollution incident, up to the minimum spill size determined in 6.2(b)(i), the response to an incident within the times set out in 9.2(a) and (b);

(e) the measures the operator is to take during the response to the oil pollution incident, taking into consideration the priorities listed in the *Environmental Response Standards*.



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(f) at least one of the persons referred to in paragraph 6.2(f) is to be accessible to Transport Canada and the Canadian Coast Guard during the response to an oil pollution incident; and

(g) the operator of the oil handling facility is prepared to:

(i) respond in relation to a quantity of oil of the spill size referred to in (d) above, or;

(ii) in the event the operator does not have an arrangement with an Response Organization, respond to an oil pollution incident in relation to the maximum quantity of oil that is scheduled to be loaded or unloaded to or from a vessel; and

(iii) **(NEW)** - investigate all incidents to determine the causes and contributing factors and the action(s) needed to reduce the risk of reoccurrence.

9.1 The equipment and resources that an oil handling facility has available for immediate use during the loading and unloading of oil to or from a vessel must include the equipment referred to in the section 6.2(d) that is required to contain or control the oil up to the minimum spill size as per 6.2(b)(i).



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9.2 Following the discovery of the oil pollution incident, unless unsafe or impracticable,

- (a) the equipment and resources referred to paragraph 6.2(*d*) are to be deployed on scene within one hour and must contain or control the quantity of oil involved in the incident up to the minimum spill size as per 6.2(b)(i); and
- (b) the equipment and resources required to recover and clean up the oil involved in the incident up to the minimum spill size as per 6.2(b)(i) are to be deployed on scene within six hours.



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PART 3

VESSELS

Prescribed vessels (unchanged)

This part of the discussion paper remains unchanged to what is in force today; there are no proposed changes.

10. The following are prescribed classes of vessels for the purpose of having an arrangement with a Response Organization:

- (a) oil tanker of 150 gross tonnage or more;
- (b) vessels of 400 gross tonnage or more that carry oil as cargo or as fuel;
and
- (c) groups of vessels that are towed or pushed, are of 150 gross tonnage or more in aggregate and carry oil as cargo.

10.1 The prescribed classes of vessels, does not include:

- (a) foreign vessels that are only transiting in the territorial sea of Canada or the exclusive economic zone of Canada and are not engaged in the loading or unloading of oil during transit;
- (b) pleasure craft; or
- (c) government vessels, naval auxiliary vessels or vessels owned or operated by a foreign state and used only on government non commercial service.



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Arrangements with Response Organizations (unchanged)

10.2 Prescribed vessels, that are located in waters south of latitude 60° N are required to have an arrangement with a Response Organization.

Prescribed vessels that are in waters north of 60°N latitude do not require an arrangement with a Response Organization.



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Consequential Changes to *Administrative Monetary Penalties (AMPs) and Notices Regulations (New)*

In support of the changes made to the Canada Shipping Act, 2001 (CSA 2001) that received Royal Assent in December 2014 (Bill C-3 - *Safeguarding Canada's Seas and Skies*), AMPs can now be applied to Part 8 of the CSA 2001 and its associated regulations.

The AMPs method of enforcement has been implemented as an alternative to the prosecution of offences because it is expeditiousness and cost savings to all concerned. Without the Regulations, enforcement of contraventions of the legislation would be limited to prosecuting in the criminal courts or suspending or cancelling of Certificates of Designations. This would be inconsistent with government initiatives to decriminalize regulatory offences and would run contrary to the intention of Parliament when it included the authority to impose AMPs in the CSA 2001.

The consequential changes to the AMPs regulations will encompass the provisions of Part 8 of the CSA 2001 as well as the proposed ER Regulations that form part of this discussion paper. The regulatory provisions dealing with the Response Organizations will be applied in Phase II of the regulatory development.



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The chart below was developed for both individuals and vessel/corporations. The penalty ranges set the minimum amount that an individual will pay for a first violation and the maximum amount that a vessel/corporation will pay for a third or subsequent violation. As a matter of general policy, vessels and corporations will be subject to higher penalties than individuals.

Gravity	1 st violation Individual / Vessel or Corporation	2 nd violation Individual / Vessel or Corporation	Subsequent Violation Individual / Vessel or Corporation
Low	\$250 / \$1,000	\$500 / \$2,000	\$1,000 / \$5,000
Medium	\$600 / \$3,000	\$1,200 / \$6,000	\$2,400 / \$12,000
High	\$1,250 / \$6,000	\$2,500 / \$12,000	\$5,000 / \$25,000