

**SUBMISSION BY THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE GOVERNMENT OF CANADA REGARDING
DISCUSSION PAPER: CANADA’S PREPAREDNESS AND RESPONSE FOR
HAZARDOUS AND NOXIOUS SUBSTANCES RELEASED FROM SHIPS**

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I. INTRODUCTION

This is the submission of the Canadian Environmental Law Association (“CELA”) in relation to the Government of Canada’s *Discussion Paper: Canada’s Preparedness And Response For Hazardous and Noxious Substances Released From Ships*.¹ The overarching purpose of the *Discussion Paper* is to assist the Government of Canada with the development of an approach to prepare for and respond to Hazardous and Noxious Substances (“HNS”) incidents in Canadian waters.

While CELA supports the overall purpose of the *Discussion Paper*, we provide specific recommendations on the Government of Canada’s proposed approach in an effort to identify gaps and create additional protections for the environment and human health and safety. In particular, CELA provides recommendations that address the definition of HNS, principles underpinning the regime, stakeholder engagement, identifying roles and responsibilities, improving knowledge of HNS in the marine environment, expanding preparedness requirements, and building marine HNS response capacity.

II. BACKGROUND

CELA is a non-profit, public interest law organization that works toward protecting human health, safety and the environment. CELA advocates for comprehensive laws, standards and policies that will protect and enhance the public health and environmental quality in Ontario and throughout Canada.

Since 1970, CELA has used legal tools, undertaken ground breaking research and conducted public interest advocacy to increase environmental protection and safeguard communities. As a specialty clinic funded by Legal Aid Ontario, we also provide equitable, access to justice to those otherwise

¹ Transport Canada, “Discussion Paper – Canada’s Preparedness and Response for Hazardous and Noxious Substances Releases from Ships” online: <http://www.tc.gc.ca/eng/canadas-preparedness-response-hns-released-from-ships-discussion-paper.html>

unable to afford representation for their environmental problems. CELA is greatly committed to increasing public participation in environmental decision-making and working with public interest groups to foster long-term sustainable solutions.

CELA has a long history of working to improve water source protection and to stop water pollution. This has included working with First Nation's communities in the development of source water protection plans and the drafting of legal tools to address threats to water. Furthermore, CELA's Healthy Great Lakes program has engaged a broad network of individuals and organizations in shaping, implementing, and making use of laws and policies that protect and restore the waters of the Great Lakes – St. Lawrence River Basin.

In addition to falling within our Water Sustainability priority, our review and comments on this *Discussion Paper* aligns with our work to protect and restore waters in Canada, in furtherance of our access to environmental justice mandate. A collection of CELA's work related to Water Sustainability can be viewed online at: <http://www.cela.ca/collections/water>

CELA also engages in law reform efforts aimed at oceans protection. Recently, we provided comments on the Government of Canada's Discussion Paper on *Potential Legislative Amendments to Strengthen Marine Environmental Protection and Response*.² As well, CELA provided submissions to the Senate Standing Committee on Fisheries and Oceans regarding Bill C-55, An Act to Amend the *Oceans Act* and the *Canada Petroleum Resources Act*.³

CELA has also engaged in detailed research and advocacy related to the improvement of public safety and environmental protection by seeking improvements to emergency preparedness in the energy sector.

III. RESPONSE TO DISCUSSION PAPER QUESTIONS

A. Definition of Hazardous and Noxious Substances

Question: Do you agree with this definition of HNS for Canada? If not, how could it be improved?

The *Discussion Paper* states that the primary focus of the HNS regime is on substances that are toxic or potentially harmful. The *Discussion Paper* proposes the following definition of a 'hazardous and noxious substance':

² See Jessica Karban and Michael Lucifora, "Submission By The Canadian Environmental Law Association To The Government Of Canada Regarding Discussion Paper: Strengthening Marine Environmental Protection And Response Potential Legislative Amendments" (October 5, 2018) online: <http://www.cela.ca/sites/cela.ca/files/1214-CELACommentsOnOceansProtectionPlanDiscussionPaper.pdf>

³ See Kerrie Blaise and Jessica Karban, "Submission Of The Canadian Environmental Law Association To The Standing Senate Committee On Fisheries And Oceans Regarding Bill C-55, An Act To Amend The *Oceans Act* And The *Canada Petroleum Resources Act*" (February 8, 2019) online: http://www.cela.ca/sites/cela.ca/files/Submission%20from%20the%20Canadian%20Environmental%20Law%20Association%20Re%20Bill%20C-55_0.pdf

An HNS is any substance other than a petroleum product which, if introduced into the marine environment from a ship, is likely to:

- create hazards to human health
- harm living resources and marine life
- damage amenities
- interfere with other legitimate uses of the sea

Overall, CELA supports the definition of HNS as proposed in the *Discussion Paper*. Specifically, we agree that the definition should be broad enough to include any substance that could cause harm to human or environmental health if released into the environment. The definition should be general enough so that it can be interpreted to include a range of substances, both dangerous and relatively benign (such as animal and vegetable oil), in any amount (*ie.*, while coal is not considered hazardous in small quantities it is hazardous in bulk), and regardless of the mode of transport. Both bulk HNS and packaged HNS carried in cargo containers must be captured.

The Canadian HNS regime should be as comprehensive as possible. CELA recommends that the Government of Canada undertake a risk assessment of products being shipped in Canadian waters to help clarify the types of materials to be included in the new regime. The last risk assessment conducted by Transport Canada (“TC”) in 2014 only considered the risk posed by existing bulk movement of HNS up to 2012.

Canada’s HNS regime must, at minimum, include all substances identified under the International Maritime Organization’s (IMO) 2010 HNS Convention and 2000 OPRC-HNS Protocol. However, both definitions have limitations and the Canadian system should include all products not covered by these international definitions, such as coal and radioactive material.

As well, any substance identified as per federal and provincial regimes should be captured within the scope of the HNS regime (e.g. Canadian Environmental Protection Agency’s Toxic Substances List, Canadian Environmental Quality Guidelines, Class 9 of the Dangerous Goods Regulation, and provincial contaminated sites regulations standards and water quality guidelines, etc.).

There should be a clear understanding of how oil derivatives, such as diluents/condensates used in transporting crude oil and bitumen fit either the hydrocarbon or HNS regulatory frameworks. It has been recommended that diluted bitumen should be treated as HNS, not under the current oil spill regime given its volatility and significant risks to responder health and safety.⁴

CELA recommends that all substances covered under the HNS regime be contained within a publicly available database.

B. Hazardous and Noxious Substances Within Canada’s Marine Safety System

⁴ City of Vancouver, Submission to the Tanker Safety Expert Panel Review Phase II Review: Canada’s Hazardous and Noxious Substances Program (April 10, 2014), online: https://www.tc.gc.ca/media/documents/mospr/City_of_Vancouver.pdf

CELA agrees with the *Discussion Paper's* position that marine HNS preparedness and response is highly complex and requires a unique approach as opposed to merely expanding or adopting the same approach used to address ship-source oil spills.

CELA would also add that preparedness and response must be tailored to both the specific HNS substances being transported as well as the local capacity and physical setting (e.g. geographic terrain, current, weather conditions).

The *Discussion Paper* states that Canada's marine HNS safety system is based on 3 pillars: (1) prevention, (2) preparedness and response, and (3) liability and compensation. CELA is concerned that the *Discussion Paper* gives insufficient attention to the issue of recovery. CELA recommends that recovery be explicitly included in any HNS regime. Recovery must include long term human health impacts for the public and responders, long term environmental remediation and monitoring, and economic recovery.⁵ For instance, legislation should be established which requires that wildlife rescue and ecosystem recovery be part of the standard HNS response activities on land or in water.⁶

CELA also questions the *Discussion Paper's* position that Canada already has an effective system in place to prevent HNS marine incidents from occurring. Limited prevention measures in Canada for HNS incidents has been flagged as a concern by various stakeholders.⁷ CELA recommends that the Government of Canada engage stakeholders on the issue of strengthening prevention measures for HNS transport by ships.

C. Potential Action

i. Guiding Principles

The *Discussion Paper* lists six principles which guide the Government's approach in developing a marine HNS preparedness and response regime. CELA supports the six principles but also recommends that the precautionary principle – a principle of international law - be added as a guiding principle. The precautionary principle states that lack of scientific certainty must not be used as a reason to ignore or postpone preventive or remedial action when there are other good reasons to act, such as in circumstances of potentially serious or irreversible environmental harm.⁸

⁵ *Supra* note 4, City of Vancouver

⁶ Union of BC Municipalities, "UBCM Submission on Canada's Lines Of Inquiry Panel Review Phase II: Hazardous and Noxious Substances" (March 28, 2014) online: https://www.tc.gc.ca/media/documents/mosprr/Union_of_British_Columbia_Municipalities-p2-hns.pdf

⁷ Government of Newfoundland and Labrador, Re: Hazardous and Noxious Substances (2014), online: <https://www.tc.gc.ca/eng/tankersafetyexpertpanel/page-140.html#u>; Islands Trust, "Re: Hazardous and Noxious Substances", Letter to Tanker Safety Panel Secretariat (March 28, 2014) online: https://www.tc.gc.ca/media/documents/mosprr/Island_Trust-p2-hns.pdf; Lynn Chiarelli and Jacquie Dale, "Oceans Protection Plan Pacific Region Dialogue Forum, Draft Summary Report, South Coast Dialogue Forum (Vancouver), March 20-21, 2018" online: <http://www.islandtrust.bc.ca/media/345847/opp-dialogue-forum-report-south-coast-spring-2018.pdf>

⁸ European Environment Agency, *Late Lessons from Early Warnings: The Precautionary Principle 1896-2000* (Copenhagen: EEA, 2002) at 13, 15; Nicolas de Sadeleer, "The Principles of Prevention and Precaution in International Law: Two Heads of the Same Coin?", chapter 9 in *Research Handbook on International*

ii. Collaborative Action

Question: Are there other stakeholders that should be involved?

CELA recommends that the following parties, at minimum, should all be engaged in HNS preparedness and response activities:

- Federal bodies and ministries including but not limited to: Transport Canada, Environment Canada, Department of Fisheries and Oceans, Public Health Agency of Canada, Health Canada and Public Safety Canada.
- Provincial bodies and ministries including: Health, Emergency Management, Environment, Transportation
- Local Governments
- Local First Responders
- Local Health Authorities
- First Nations
- Coastal Communities
- Response Organizations
- Private Sector Hazmat Teams
- Terminal Owners and Operators
- Port Authorities
- Recreational boaters
- Environmental Organizations and Conservation Authorities
- Pilotage Authorities (e.g. Pacific Pilotage Authority)
- Tug Operators
- Residents and businesses in high-risk zones
- Research institutions
- International partners, including the US Coast Guard, Environmental Protection Agency, and State Departments of Ecology and Environment

All the above parties must be involved in preparedness and response and must be adequately resourced and trained to do so.

Widespread engagement and consultation with local first responders and health authorities should be a priority in developing an HNS preparedness and response regime.

Awareness of emergency measures is key to the success of emergency response and thus the inclusion of the public and civil society both in the review and development of response plans and in its dissemination, must be foundational to Canada's approach. The Government of Canada

Environmental Law, Malgosia Fitzmaurice, David M. Ong and Panos Merkouris, eds (United Kingdom: Edward Elgar, 2014) at 184.

should host educational workshops for stakeholders that facilitate meaningful participation in the development of a comprehensive HNS regime.

iii. A Phased Approach

The *Discussion Paper* outlines a three-phase approach for developing an HNS preparedness and response regime that will occur over 5 years. Although CELA recognises that the development of a comprehensive and effective HNS regime must not be rushed and will take several years to develop and implement correctly, the lack of clearly defined timelines is a concern given that the need for a national framework for addressing HNS incidents was first identified several decades ago and most recently by the Tanker Safety Expert Panel in 2014. Given the significant delays to date, CELA urges the Government of Canada to begin Phase I as soon as feasibly possible and provide a defined timeline.

a. Phase I: Clarify Current System

Question: Are activities listed under Phase I appropriate? If not, how could we improve them?

(1) Clarify roles and responsibilities

CELA agrees that clarifying roles and responsibilities is a crucial first step in establishing a marine HNS preparedness and response regime. The lack of clear roles and responsibilities for HNS preparedness and response has been identified as a major gap in the current framework.⁹

Proposed Activity: CCG would expand their national contingency plan to include the roles, responsibilities and procedures for HNS preparedness and response

CELA supports the development of a national contingency plan for HNS preparedness and response to clarify the roles, responsibilities and procedures. CELA recommends that the development of the national contingency plan be led by the Canadian Coast Guard (“CCG”) in collaboration with other federal agencies including but not limited to TC, Environment Canada (“EC”), Department of Fisheries and Oceans (“DFO”), Public Health Agency of Canada, Health Canada and Public Safety Canada.

With respect to the role of CCG, it should be clearly identified whether, in addition to its role as spill response supervisor (i.e. as Federal Monitoring Officer), the CCG also has a specific mandate to respond to an HNS spill incident (i.e. as On-scene Commander).

The critical role of local government, local first responders and local health authorities in HNS preparedness and response must be acknowledged and they must be fully integrated into preparedness and response planning, training, and exercising.¹⁰

⁹ *Supra* note 4, City of Vancouver

¹⁰ North Vancouver District, Sustainable Community Development Department, “Re: Strategic Review of Canada’s Hazardous and Noxious Substances – Phase II”, (March 28, 2014) online: https://www.tc.gc.ca/media/documents/mosprr/District_of_North_Vancouver-p2-hns.pdf

Proposed Activity: TC would organize regular symposiums to improve awareness and build relationships among parties involved in HNS preparedness and response

CELA supports this initiative. Engagement with all relevant parties is essential in developing and implementing an effective HNS preparedness and response framework.

CELA also recommends that the Government of Canada host educational workshops aimed at supporting meaningful participation of all parties in the development of a comprehensive HNS regime. Widespread engagement of local first responders and health authorities should be a priority given their critical and essential role in HNS preparedness and response.

Additionally, in order to facilitate public engagement, it is crucial that all HNS preparedness and response plans be made publicly available. While public awareness of response measures is a key aspect of emergency planning, the plan or basis which informs the HNS regime must also be publicly disclosed. This will not only assist the public in providing feedback or asking questions but enable a higher level of readiness and awareness of response measures.

Proposed Activity: The Government of Canada would enhance its capacity to provide scientific advice and information on chemical response safety in the marine environment

CELA agrees that it is essential for the Government of Canada to develop its capacity to provide scientific advice and information in early stages of developing an HNS preparedness and response regime.

In particular, the types of scientific knowledge and expertise that must be available during an HNS incident include the chemical and physical properties of a product, its environmental toxicity and impact on human health and safety, its reaction/behavior in the marine environment, potential response measures, as well as accurate weather, ocean currents and ice information, and atmospheric and aquatic dispersion modeling.¹¹ This information is essential for effective response because arguably the most important stage of an HNS incident response is the timely and rapid initial assessment upon which response strategies are based. Scientific advice and information should be readily available for responders and local authorities during a response.¹²

Compared to oil spills, however, HNS and their effects on the environment have not been well studied but have the potential to create major impacts.¹³ Given the knowledge and awareness gap that exists with respect to marine movement of HNS in Canada and the effects of HNS spills, CELA recommends that the Government of Canada continually monitor developments and make targeted investments in research and development (“R&D”) in order to address these gaps. These

¹¹ Quebec Regional Advisory Council, “Objet: Révision de la Partie VIII de la LMMC, deuxième volet : Substances nocives toxiques dangereuses” (February 19, 2014) online:

https://www.tc.gc.ca/media/documents/mospr/Quebec_Regional_Advisory_Council_Submission.pdf

¹² *Supra* note 4, City of Vancouver.

¹³ Council of Canadian Academics, “Commercial Marine Shipping Accidents: Understanding the Risks in Canada. Workshop Report” (2016).

studies must be cognizant of unique marine conditions, climactic and weather influences (*ie.*, pack ice or unfavourable wave conditions which may impede access to spill sites).

In particular, the Government of Canada will need to continue to collect data on the movement of HNS, to research the fate, behavior and the short- and long-term ecological, environmental and human health impacts of HNS in different marine environments. Research on the short- and long-term impacts of different response techniques must also be undertaken. There are significant knowledge gaps with respect to the ecological, environmental, and human health impacts of alternative response measures (*i.e.* non-mechanical interventions such as in-situ burning, use of foam, use of dispersants, etc.).

Monitoring programs implemented during a response are one of the best ways to assess the potential and actual damage of a spill to the surrounding environment and determine the most effective response strategies. Post-incident monitoring should also be undertaken in order to evaluate any potential long-term impacts and needs for environmental recovery, as well as identification of lessons learned to inform future preparedness and response requirements.

HNS-related R&D priorities should be established in consultation with stakeholders and based on risk assessment and gap analysis. An R&D database should be created in order to enable dissemination of existing work. There should be a dedicated funding stream for R&D through a partnership between government and industry.

Proposed Activity: The CGC would organize and develop joint response exercises to test Canada's readiness and identify gaps in HNS marine response

CELA supports joint response exercises to test Canada's readiness and identify gaps in HNS marine response. Specifically, CELA recommends that Canada's response capacity be tested through annual recurrent, full scale, and worst-case scenario exercises. Federal agencies, local government and first responders must be involved. These exercises should be funded, at least in part, by industry.¹⁴

After-action reports must be drafted and made publicly available following test exercises, and findings from the exercises incorporated into existing plans in order to improve preparedness and readiness.

(2) Align approach with international partners

Proposed Activity: TC would assess requirements to accede to the OPRC- HNS Protocol

CELA supports the Government of Canada's accession to the *OPRC-HNS Protocol*. We believe that Canada's HNS spill regime must abide by the international agreements developed by the IMO,

¹⁴ North Shore Emergency Management Office, City of North Vancouver, "Re: Phase II Submission of Canada's Spill Preparedness and Response Regime", (March 27, 2014) online: https://www.tc.gc.ca/media/documents/mosprr/City_of_North_Vancouver_North_Shore_EMO.pdf

and acceding to the Protocol is an important first step towards Canada developing a comprehensive ship-source HNS preparedness and response regime.

Proposed Activity: The Government of Canada would develop international science and data partnerships, and share best practices

CELA supports this activity. In particular, we recommend a jurisdictional comparison that identifies and assess other HNS regimes around the world, such as the United Kingdom, Norway, Netherlands and Australia.

All data, studies, meeting minutes and presentations resulting from these partnerships should be made publicly available online.

b. Phase II: Targeted Enhancements

Question: Are activities listed under Phase II appropriate? If not, how could we improve them?

(1) Improve knowledge of HNS in the marine environment

CELA supports this initiative but believes that activities aimed at improving knowledge of HNS in the marine environment should begin in Phase I. Data collection on HNS movement in Canada is necessary in order to identify gaps and make targeted enhancements (Phase II) to marine HNS preparedness and response.

Proposed Activity: TC would further develop HNS risk assessment methodologies to improve our ability to identify high-risk locations/situations and work with others to develop targeted mitigation strategies

CELA supports the further development of HNS risk assessment methodologies.

Revised risk assessment processes must be implemented to reflect best practices. Specifically, risk assessment processes must consider the worst-case planning scenario and give equal weight to both the potential consequences and the probability of an incident.¹⁵ Risk assessment processes must also look at current and future volumes of products being shipped in Canadian waters, the risk tolerance level of local communities and environments, and cumulative effects (economic, environmental, and social).¹⁶ Clear standards for risk assessment should be developed and enforced by the federal government. National risk assessments for HNS should be reviewed annually and updated with new information as it is available. The results of HNS risk assessments should be made public.

It is important to recognize that attempts to carry out meaningful risk assessments are often frustrated by the lack of reliable information for HNS. In the absence of further research on how

¹⁵ Supra note 4, City of Vancouver.

¹⁶ *Ibid.*

HNS materials behave in a marine environment, as well as public data on the frequency of HNS marine movement in Canada, it is difficult to accurately carry out risk assessments.

(2) Expand preparedness requirements

Proposed Activity: If gaps in industry’s preparedness for HNS releases are identified in Phase I, the Government of Canada could require prescribed vessels that carry HNS to have plans for addressing HNS releases

CELA agrees that prescribed vessels must be required to carry HNS plans for addressing HNS releases if gaps in industry’s preparedness for HNS releases are identified in Phase I.

CELA recommends that the Government of Canada require these plans to be extensive and identify specific response capabilities (personnel and equipment) and the parties involved in executing the response plans.¹⁷ These plans should also include requirements to have a mandatory training plan for the crew and an exercise program.¹⁸ Plans should be reviewed at regular intervals and after any incident.¹⁹ TC would need to review plans to ensure that a vessel has developed a plan that meets the required criteria. Prescribed classes of vessels should be based on risk factors and determined in consultation with stakeholders.

Proposed Activity: TC could explore more planning requirements for ports and marine facilities handling HNS to include preparedness and response plans for ship-source HNS releases in their practice and procedures

CELA agrees that it equally important for ports and HNS marine handling facilities to have HNS response plans and be equipped in order to respond. HNS spills occurring at terminals and during transfer beyond terminals also have the ability to impact the marine environment and require coordinated response.²⁰ The requirements described above for vessel plans should also apply to ports and marine handling facility plans.

Other Considerations

i. Regional Planning

In addition to ship and facility plans, CELA recommends that the Government of Canada, led by the CCG, develop regional plans based on specific regional vulnerabilities and characteristics.

¹⁷ Dr. Karen Purnell, “Are HNS Spills More Dangerous Than Oil Spills? A White Paper for the Interspill Conference & the 4th IMO R&D Forum, Marseille May 2019” online:

https://www.tc.gc.ca/media/documents/mospr/Shipping_Federation_of_Canada-p2-hns.pdf

; Tanker Safety Expert Panel, “A Review of Canada’s Ship-source Spill Preparedness and Response: Setting the Course for the Future, Phase II. Requirements for the Arctic and Hazardous and Noxious Substances”, (September 30, 2014) online: <https://www.tc.gc.ca/media/documents/mospr/TC-Tanker-E-P2.pdf>

¹⁸ *Supra* note 17, TSEP Report.

¹⁹ *Ibid.*

²⁰ *Supra* note 4, City of Vancouver.

The purpose of regional planning is to develop an understanding of the general marine movement of HNS within a region and identify the parties and resources available to respond to an HNS incident. Regional plans significantly reduce the time needed to make decisions during the initial response.²¹ Regional plans should include methods of clean up and response, and identify the potential impacts of different response technologies (i.e. mechanical and non-mechanical interventions).

Regional plans should identify measures for high risk areas due to factors such as increased navigation, geographic impediments, and weather conditions.²² Regional plans should also identify special measures for sensitive areas, including areas of significance for human health and safety, environmentally and ecologically sensitive areas, economically sensitive areas, and areas associated with cultural, historic or archeological sites.

Regional plans should be based on standards developed and set by the Government of Canada, with input and oversight from provincial and local governments, First Nations, coastal communities and civil society.²³ Plans should reflect local and regional social, economic, cultural and ecological values.²⁴ Initially, regional plans can be developed for the most common HNS substances being shipped in Canadian waters based on a risk assessment analysis.

ii. Response Technologies

CELA recommends that the Government of Canada develop a framework of response technologies and develop a list of the circumstances under which they can be used. Decisions to implement a given response techniques, especially non-mechanism interventions, must be based on Net Environmental Benefit Assessment to determine if the response method will contribute positively to recovery.²⁵

(3) Build marine HNS response capacity

CELA agrees that building marine HNS response capacity is an important stage in establishing Canada's HNS preparedness and response regime. The lack of capacity of responsible agencies to fulfill their roles has been identified as a major gap in the current framework.²⁶ It is important to

²¹ *Supra* note 7, TSEP Report.

²² *Supra* note 6, Union of BC Municipalities.

²³ *Supra* note 6, Union of BC Municipalities.

²⁴ *Supra* note 6, Island Trust.

²⁵ BC Ministry of Environment, "Response to Line if Inquiry Panel Review Phase II: Hazardous and Noxious Substances", (March 28, 2014) online:

[https://www.tc.gc.ca/media/documents/mosprr/British Columbia Ministry of Environment Submission.pdf](https://www.tc.gc.ca/media/documents/mosprr/British_Columbia_Ministry_of_Environment_Submission.pdf);

Government of Quebec, Department of Sustainable Development, Environment, and the Fight Against Climate

Change, "Mémoire Du Gouvernement Du Québec, Dans Le Cadre De La Consultation Pancanadienne Sur Le Régime, De Préparation Et D'intervention En Cas De Déversement D'hydrocarbures Par Des Navires Par Le Comité D'experts Sur Les Navires-Citernes De Transports Canada", (August 12, 2014) online:

[https://www.tc.gc.ca/media/documents/mosprr/Government_of_Quebec_Department_of_Sustainable_Development_Environment_and_the_Fight_Against_Climate_Change%20\[2\].pdf](https://www.tc.gc.ca/media/documents/mosprr/Government_of_Quebec_Department_of_Sustainable_Development_Environment_and_the_Fight_Against_Climate_Change%20[2].pdf); *Supra* note 10, North Vancouver District.

²⁶ *Supra* note 4, City of Vancouver.

recognize that competency in responding to HNS spills is a skill that will be attained only after investments in response equipment and personal training are made.²⁷

Proposed Activity: The Government of Canada would deliver ongoing HNS response training to preparedness and response stakeholders, including operational response techniques

CELA supports ongoing HNS response training to preparedness and response stakeholders, especially for local governments and local first responders.

In addition to training, CELA recommends regular exercises involving various stakeholders. Moreover, building marine HNS response capacity also requires that parties with response roles are adequately resourced, properly equipped, and appropriately located to ensure response capacity.

It has been identified that the CCG does not currently possess the expertise or specialized equipment required to effectively respond to an HNS incident. In order to effectively fulfill its roles, either as Federal Monitoring Officer or On-Scene Commander) it is critical that the CCG develop preparedness and response capacity through adequate training and exercise, resources, and response capabilities.²⁸

EC and DFO also require sustained funding and training to build their capacity to provide the scientific advice needed to support response operations. EC and DFO should improve their ability to respond to HNS incidents and to participate in preparedness activities for HNS incidents, such as regional planning and exercises, to conduct research and development toward implementing supporting operational systems, as well as to provide scientific expertise and HNS modelling capabilities during an HNS incident in support of the response.²⁹

There is also a need for locally based teams representing federal agencies and ministries (e.g. DFO and EC) with knowledge and capacity to prepare, mitigate, respond, and recover to worst case scenarios.³⁰ Adequate resourcing of their efforts and capacity is crucial to the success of emergency response and planning.

Proposed Activity: The Government of Canada would develop and actively maintain a national inventory of organizations with trained responders and equipment to respond to HNS releases

CELA agrees that the Government of Canada should develop and actively maintain a national inventory of organizations with trained responders and equipment to respond to HNS releases.

Industry should fund, at least in part, equipment stockpiles through dues or transit fees.

The Government of Canada should clarify whether it intends to expand the mandate of Response Organizations (ROs), which are well established in the context of ship-source oil spill response, to

²⁷ *Supra* note 17, Are HNS Spills More Dangerous than Oil Spills?

²⁸ *Supra* note 17, TSEP Report; *Supra* note 14, North Shore Emergency Management Office.

²⁹ *Supra* note 17, TSEP Report.

³⁰ *Supra* note 4, City of Vancouver.

fulfil the role of responder for certain HNS incidents. Whether Canada's ROs could fulfil this role for HNS incidents is subject to debate. On the one hand, the Tanker Safety Expert Panel has taken the view that using a RO model is not viable approach for an HNS preparedness and response because the extreme variety of HNS substances and their behavior creates preparedness and response complexities that do not exist to the same degree for oil. Instead, the preferred model, in the Panel's opinion, is to increase requirements for the ship and facility owners to identify, in a plan, the suit of potential response options, tactics and equipment that could be employed from providers. On the other, several provincial ministries, local governments, responders, and organizations have taken the perspective that ROs could have a role to play in responding to HNS incidents in the future once their expertise and capacity reaches a critical mass.³¹

Should the Government of Canada decide to broaden the role of ROs to respond include HNS, it will require several years of training, exercising, assessment and ongoing improvement before it can be considered viable approach for an HNS preparedness and response regime. It is critical that responders are properly trained by establishing a minimum standard training requirement and certification. Until that time, ship owners and operators are likely to have more expertise in dealing with HNS.³² Moreover, because a major aspect of HNS incidents, unlike oil spill response, involves public health and safety, it is therefore likely that public agencies, particularly at the local level, would still need to be involved in HNS response regardless of the role of ROs.³³

Other Considerations

i. Communication and Real-time Information Sharing

Developing real-time monitoring capability and information management systems for HNS is an essential component of building marine HNS response capacity. It is necessary to ensure that local governments and emergency responders have access to real time information of HNS cargo on vessels in Canada.³⁴ A comprehensive database should track the movement of HNS throughout Canadian waters and provide information about the amount, type, fate, behavior, risks and response requirements for all HNS transiting local waters. This information is critical as it provides situational awareness and enables quick and effective response.

ii. Reporting of Incidents and Near-misses

³¹ *Supra* note 4, City of Vancouver; *Supra* note 10, North Vancouver District; *Supra* note 14, North Shore Emergency Management Office; *Supra* note 24, Government of Quebec;; International Tankers Owners Pollution Federation, "Re: Lines of Inquiry Panel Review Phase II: Hazardous and Noxious Substances", (April 4, 2014) online:

https://www.tc.gc.ca/media/documents/mosprr/International_Tanker_Owners_Pollution_Federation_Submission.pdf ; Shipping Federation of Canada, "Panel Review Phase II: Hazardous and Noxious Substances. Submitted to the Tanker Safety Expert Panel", (March 28, 2014) online:

https://www.tc.gc.ca/media/documents/mosprr/Shipping_Federation_of_Canada-p2-hns.pdf

³² *Supra* note 7, Government of Newfoundland and Labrador; *Supra* note 31, International Tankers Owners Pollution Federation.

³³ *Supra* note 31, International Tankers Owners Pollution Federation; Intertanko, Submission on Hazardous and Noxious Substances, (April 14, 2014) online: <https://www.tc.gc.ca/eng/tankersafetyexpertpanel/page-140.html#u>

³⁴ *Supra* note 14, North Shore Emergency Management Office; *Supra* note 17, TSEP Report; *Supra* note 4, City of Vancouver.

All shipowners, handling facilities and response organization should be required to report publicly on near-misses and incidents, including the impacts and potential impacts of the incident or near-miss, and corrective action. Reporting should be regulated and enforced by TC.³⁵ A public database documenting near-misses and incidents in a region should be created.

iii. Vessel Salvage and Areas of Refuge

Canada's HNS regime must include salvage capabilities, training, and pre-positioning of salvage equipment capable of responding to incident involving all types of marine HNS. Selecting places of refuge should reflect local and regional social, economic, cultural and ecological values.³⁶

IV. CONCLUSION

CELA applauds the Government of Canada's efforts to initiate the process of developing a preparedness and response regime for marine HNS. While CELA supports the proposed actions set out in the *Discussion Paper*, specific recommendations have been provided in an effort to identify gaps and provide additional protections for the environment and human health and safety.

It is critical that substantive action from responsible federal ministries continue to be taken in a timely manner to establish an HNS preparedness and response regime. In the absence of such a framework, there is substantial risk of such incidents escalating to threat and impact public and environmental health and safety on a large scale. We look forward to future consultation opportunities and reviewing subsequent HNS emergency response plans.

All of which is respectfully submitted this 28th day of February, 2019.

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³⁵ *Supra* note 4, City of Vancouver.

³⁶ *Ibid.*