



CONTINUOUSLY IMPROVING MARINE SAFETY

A perspective from international shipping

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SHIPPING FEDERATION OF CANADA

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INTRODUCTORY COMMENTS

The Shipping Federation of Canada, incorporated by an Act of Parliament in 1903, is representative of the owners, operators, and agents of ocean ships that carry Canada's imports and exports and call ports across Canada. The Federation's member companies are involved in all sectors of the shipping industry, including dry bulk, liquid bulk, container and cruise.

We would like to stress from the outset that the focus of this consultation and future policy discussions should be on how to CONTINUOUSLY improve marine safety. The data available on the rate of accidents and incidents and recent reports demonstrate that we do have a history of safe shipping in Canada and vessels operating in Canadian waters are governed by a strong regulatory and safety framework.¹

As the volume of oil carried on Canadian routes has increased over the years, so too has the operational safety of the tankers carrying this cargo. Navigational technologies, safety management procedures, and the training of shipboard and shore personnel have also undergone a significant evolution in terms of safety and effectiveness over the last decade. In fact, looking at the data currently available from the Transportation Safety Board, *fewer than 2% of commercial marine incidents and accidents in Canadian waters involved a know release of pollutants into the environment.*² Acknowledging that the data on which this statement is based suffers some shortfalls (see below), it still does not take away from the overall conclusion that commercial vessels move safely in Canadian waters.

Any industrial activity comes with a level of risk associated with its operations. This being said, the safety record of the shipping industry – as mentioned above - must be clearly communicated to the public so that we can have an informed and factual national dialogue on acceptable levels of risk linked to marine transportation in Canada.

¹ Report from the Tanker Safety Expert Panel, *A review of Canada's Ship-source Oil Spill Preparedness and Response Regime - Setting the Course for the Future*, submitted to TC on November 15, 2013 (hereunder "Tanker Safety Expert Panel Report")– page 8:

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

Report from the Council of Canadian Academies, commissioned by the Clear Sea Center for Responsible Marine Shipping, *Commercial Marine Shipping Accidents: Understanding the Risks in Canada*, 2016 (hereunder "Clear Sea Report"):

Evidence also indicates that marine shipping has fewer incidents and accidents compared to other modes of transport, and fewer fatalities (page 5)

The regulatory and safety framework that governs marine shipping in Canada is well developed and continues to evolve (page 20)

Most of the reports submitted to the TSB from 2004 to 2015 indicated that pollutants were not released. The low number of pollution events made it difficult to perform any meaningful analyses (p. 32)

² Clear Sea Report, note 1, page 22.



Furthermore, the various components of the prevention system that is currently in place to ensure the safety of marine transportation in general must also be fully acknowledged and communicated. This prevention framework is based on a multi-layered system, which involves:

- The ship and its equipment
- The crew, ship management and operations
- The flag administration, port state control and enforcement
- Waterways management, marine communication services in support of marine safety (icebreaking, pilotage, tugs, etc.)
- Classification societies and insurers
- Best practices

This being said, we do embrace the concept of continuous improvement – recognising that more can always be done in order to further reduce the risks linked to marine transportation.

Prior to moving to specific recommendations, we wish to raise one overall issue – which we believe must be addressed as the government and industry work together to “continuously” improving marine safety.

Deficiencies in data on marine transportation:

Having comprehensive data on marine transportation in Canadian waters is essential to:

- establish trends in terms of vessels (type, size, safety records, etc.) and commodities moving in Canadian waters;
- develop lessons learned from incidents and accidents;
- ensure accurate assessment of the risks;
- ensure that improvement or mitigation measures being considered to manage risks are grounded in fact; and
- increase public knowledge of the state of the commercial fleet navigating in Canadian waters, therefore contributing to the social license of marine transportation in Canada.

Although several entities are currently compiling data on various aspects of marine transportation – including the Canadian Ship-source Oil Pollution Fund, the Transportation Safety Board of Canada and to some extent the Canadian Coast Guard – those databases suffer from limitations in terms of scope or content. Recent reports have indeed identified some of the shortfalls affecting the data currently available on marine transportation in Canada.³

³ Report of the Commissioner of the Environment and Sustainable Development, *Chapter 1 Oil Spill from ships*, 2010; Tanker Safety Expert Panel Report, note 1; Clear Sea Report, note 1.



Furthermore, the federal government stopped publishing *Shipping in Canada* in 2012, leaving a significant gap in Canada's ability to have a comprehensive overview of domestic and international shipping activities in Canadian waters.

While there are some ongoing initiatives to address the above shortfalls by gathering additional data – such initiatives are focused at the regional level (e.g., the “Système d'Information Maritime” established by the Société de Développement Économique du Saint Laurent (SODES) in cooperation with provincial and federal partners).

It is essential that the federal government re-assumes its leadership role in ensuring comprehensive NATIONAL data on marine transportation in Canada – building on existing databases, addressing shortfalls and centralising such data. As part of this process, the government should reinstate the publication *Shipping in Canada* (“new and improved”).

Having a centralised set of accurate and comprehensive data on marine transportation is crucial to working towards a common understanding between the marine industry, the government and the public of the levels of risk associated with commercial navigation in Canadian waters. This is a first step in building “common and informed views” on the acceptability of such risks.

CONTINUOUSLY IMPROVING MARINE SAFETY

In its consultation paper, Transport Canada is seeking inputs on the following two questions:

1. *What are the most important issues to be addressed by the Government's commitment to enhance marine safety?*
2. *What are the most important actions that could be taken to improve marine safety?*

i. Canada Oil Spill Response and Preparedness Regime – what is next?

We wish to reiterate the comments we made in 2013, as part of the consultation process that took place under the auspices of the Tanker Safety Expert Panel:

- Canada's current marine oil spill preparedness and response regime is already world class.
- Any consideration of improving Canada's oil spill regime must continue to abide by the international conventions that Canada has ratified.
- Canada's oil spill regime must continue to provide adequate levels of service at a reasonable cost, without compromising the degree of preparedness or environmental protection that is provided under the current system.
- The future regime must avoid any arbitrary increase in response capacity that would have to be funded by all ships plying Canadian waters.

The above comments are still very much relevant as Transport Canada is assessing the adequacy of spill response plans on a regional basis – through the areas response planning initiative.



We also believe that as part of a “continuous improvement” approach, Transport Canada should focus its efforts on the following aspects, which have been highlighted in the report of the Tanker Safety Expert Panel:

- **Considering the merits of a centralized marine casualty decision making-authority:** The recent events with the M/V Marathassa have highlighted the importance of effective coordination between the various government agencies involved in responding to an oil spill. Although we understand that the Canadian Coast Guard, as the department responsible to oversee oil spill response, is still in the process of implementing the Incident Command System, it is clear that more remains to be done to ensure coordination between the relevant departments. Ensuring that the public trusts the “institution” managing the oil spill response is critical. In this respect, we support the recommendation made by the Tanker Safety Expert Panel and urge the federal government to further consider the merits of establishing a centralized marine casualty decision making-authority – which could ensure not only the timeliness of decision-making but also that the management of the spill response is devoid of undue political interference. The above recommendation is not aimed at discrediting the work done by the Canadian Coast Guard; It is rather based on our assessment that the challenges involved with interdepartmental cooperation and the interplay between the various jurisdictions as well as media management, may require a higher level of independency than what is currently feasible under the Incident Command System, in order to ensure an effective spill response.
- **Ensuring timely decision on place of refuge:** In a context of increased public sensitivities toward shipping in Canadian waters, it is also essential that Transport Canada be in a position to take effective and prompt decisions – devoid of political interference – when it comes to granting a place of refuge to a vessel in distress. As mentioned by the Tanker Safety Panel Expert: *finding the ideal location to shelter a vessel in distress is a challenge, but also a critical part of a coastal State’s contingency planning*. Having a national policy is a one step, but even more important is the need to ensure that an actual decision will be effectively made in a timely manner if “push comes to shove”. In that respect, we note with interest the reference made by the Tanker Expert Safety Panel to the Norwegian model, which *maintains and continuously updates a list of possible places of refuge, which is publicly available* – as it would allow a level of transparency for both the public and ship-owners when it comes to actual places of refuge.
- **Maintaining and strengthening the long term operational funding for the National Air Surveillance Program (NASP):** Aerial surveillance under the NASP – which allows TC to keep a watchful eye on vessels transiting waters under Canadian jurisdiction - is a vital component of Canada’s ability to monitor and manage spill response. Maintaining eyes on the water is essential to both ship-owners and the public when it comes to the shipping industry’s social license to operate in Canada.



ii. Focussing Government Funding in support of Marine Safety:

We believe that the following measures have the potential to further improve ship safety in Canada – as part of the federal government’s mandate on waterway management:

- **The renewal of the Canadian Coast Guard Icebreaking fleet:** The Canadian Coast Guard’s icebreaking fleet plays a fundamental role in ensuring the safe movement of ships in a number of key Canadian trade corridors, including the Arctic, the northeast coast of Newfoundland, and the St. Lawrence and Great Lakes. Despite its importance for safe navigation, the Coast Guard’s icebreaking fleet is in a precarious state, as the number of icebreakers has declined over the years and several of the remaining vessels have exceeded their operational life expectancy. Pressure on the fleet is expected to grow even further, as Canada continues to negotiate and implement new trade agreements, as recent commercial ventures such as the year-round petroleum shuttle traffic between Montreal and Quebec are taking place, and as cruise ship traffic in the Arctic increases. No one can predict if and when we might experience year-round ice-free navigation south and/or north of 60. Consequently, the Coast Guard’s icebreaking fleet must have sufficient capacity and capability to ensure safe navigation for the next several decades – as we will continue to regularly experience cold winters south of 60 and face the added challenges created by floating pieces of multi-year ice in the Canadian Arctic (due to the gradual melting of ice).⁴ The government must adopt a concrete plan for renewing the Coast Guard’s fleet of icebreakers, which includes securing the necessary funding and establishing realistic and verifiable timelines for the delivery of these vessels in the medium term. The government must also explore options for ensuring the availability of adequate icebreaking capacity in the short term, including the possibility of purchasing or chartering existing foreign icebreakers and/or building such vessels abroad.
- **Embracing new technologies for aids to navigation:** The government must also ensure that adequate funding is available to maintain and enhance its commitments towards new technologies in aids to navigation. This should include continued funding for the deployment of four-season buoys in the St. Lawrence River, the move towards electronic aids to navigation (with virtual and/or synthetic buoys), and greater use of smart buoys (such as wave rider buoy – which can provide, for example, swell information at the entrance of sea ports where oil is transported).
- **Increased investments in nautical charts:** The need for the Canadian Hydrographic Service to undertake more soundings and produce new charts, especially for the Canadian Arctic, has been highlighted in several recent reports. This must rank high among the safety priorities for this region, considering that the Canadian Hydrographic Service is estimating that *only about one percent of Canadian Arctic waters are surveyed to modern standards*⁵

⁴As the ice coverage of the first year ice weakens and/or disappears; pieces of multi-year ice are free to move into shipping channels (with the winds and currents) – creating a new sets of hazards and increasing in the needs for icebreaking capacity.

⁵ Report of the Commissioner of the Environment and Sustainable Development, Chapter 3, *Marine Navigation in the Canadian Arctic*, Fall 2014.



- **Ensuring a strong and consistent enforcement of international and national laws:** In addition to ensuring long term funding for the National Air Surveillance Program (as mentioned above), it is also important that the federal government allocates adequate funding to strengthen Canada's compliance and enforcement activities, including the recruitment and training of new inspectors with the appropriate technical knowledge to conduct such activities (port state control, dangerous goods, marine safety) and to ensure a consistent implementation and enforcement of IMO international standards in Canada.
- **Canada as an "active" Coastal State:** It is also important that Transport Canada and the Canadian Coast Guard be adequately funded to sustain Canada's contribution to the development of international safety and pollution prevention standards at the International Maritime Organization. In other words, Canada's presence at the IMO table, as a strong coastal state, is essential.

iii. Consolidating Transport Canada's regulatory powers in safety matters and pilotage

Ensuring that the regulatory powers in safety matters is unfettered is also a very important component of safe navigation in Canadian waters.

However, over the years, there have been situations in which safety related matters have found their way into commercial service contracts with pilot corporations – amounting to a circumvention of the regulatory authority. As examples, we have seen provisions within pilot service contracts imposing new requirements for double pilotage on certain type of ships or modifying the process for ordering pilots for daytime and nighttime navigation. These are matters that are in fact subject to regulatory powers under the *Pilotage Act* and should therefore not be included in service contracts with pilot corporations.

The need to address this issue has been raised in the past by the Canadian Transportation Agency as part of its review of a tariff appeal:

The Minister of Transport noted his concern over such contract provisions in his letter to the Authority dated November 15, 1999, following the completion of the Ministerial Pilotage Review. In that letter, the Minister stated, inter alia:

... The inclusion of issues subject to regulation in pilotage service contracts would make it appear that the Authority has circumvented the federal regulatory process...

Provisions, such as these, which require regulatory approval should not be included in any future service contracts.

(...) The inclusion of such clauses in the service contracts is an improper delegation of the Authority's powers to the pilot corporations. In so doing, the Authority has limited itself as to actions or changes that it can make through regulatory amendments which it is mandated to do under the Pilotage Act.⁶

⁶ Canada Transportation Agency Decision No 645-W-2002



Pilot corporations are acting as service providers, influenced not only by safety considerations, but also by the need to generate income for their members. To allow service contracts with pilot corporations to circumvent the regulatory process is to create a situation in which Pilotage Authorities - and eventually Transport Canada and the federal government – can be seen as having effectively ceded their mandate related to the safety of navigation to privately owned commercial corporations operating under a legislated monopoly.

An amendment to the *Pilotage Act* is long overdue to address this situation and to prevent any further erosion of regulatory powers with respect to safety. Towards that end, we have outlined a number of proposals to amend the *Pilotage Act* in Annex A to this document and invite you to consider such amendments as part of this Government’s mandate to “continuously” improve marine safety.

CRUDE OIL TANKER MORATORIUM ON BRITISH COLUMBIA’S NORTH COAST

It is not our role to advocate for specific resource development projects – but it is our mandate to contribute to the policy discussion on safe and efficient navigation in Canadian waters.

We are concerned that the ongoing discussions on the proposed tanker moratorium on the British Columbia’s (B.C.) North Coast have been somewhat coloured by the debate on the social acceptability of oil extraction activities in Canada. In fact, it is telling that the moratorium proposal is portrayed in such a light in some media:

If the government wants to stop Northern Gateway, it can simply do so, either by order-in-council or legislation. So why a tanker ban??

Looking at the question purely from a transportation perspective, we believe that the facts do not support the implementation of a tanker ban off the B.C.’s North Coast. More specifically, Transport Canada’s own assessment of the levels of risk for tanker traffic in that region and the safety record of tankers in Canadian waters overall do not lend support to an outright conclusion that the risks associated with this type of traffic cannot be adequately managed.

i. Transport Canada’s assessment of the levels of risk:

In 2012, Transport Canada completed a safety review of the marine transportation components of the Northern Gateway Project *to ensure that it can be carried out within acceptable risk levels consistent with Canada’s regulatory regime and safety standards, and industry best practices.* Through this study, Transport Canada stated that:

The review has not identified any regulatory issues or gaps or the need to consider any new regulatory requirements at this time (...) The existing international and Canadian marine laws and regulations, complemented by the enhanced safety measures the proponent is committed to implementing and monitoring will provide for safer shipping in support of the Northern Gateway

⁷ *A Tanker Ban is the Hard Way to Deal with Northern Gateway*, Globe and Mail, November 21, 2015.



Project (...) The proposed shipping routes are appropriate for the oil tankers that will be used at the proposed terminal (...) While there will always be residual risk in any project, after reviewing the proponent's studies and taking into account the proponent's commitments, no regulatory concerns have been identified for the vessels, vessel operations, the proposed routes, navigability, other waterway users and the marine terminal operations associated with vessels supporting the Northern Gateway Project. Commitments by the proponent will help ensure safety is maintained at a level beyond the regulatory requirements. ⁸

Safety record of tanker traffic in Canada:

Most of the oil traffic is taking place on the east coast of Canada and in the Saint Lawrence and Great Lakes regions, where tankers have been safely carrying crude oil and other oil products for years. Looking at the safety record, *Canada has not experienced any spills over 1,000 tonnes in the last 10 years, and in fact, there has been no major crude spill in that period.* ⁹

Although we acknowledge that the size of spills is not the only factor when assessing the risks, it would seem to us that it is an important factor when considering the adoption of extreme measures – i.e., the imposition of a moratorium on specific vessel movements under the assumptions that the risk of spills cannot be adequately managed.

Several risk studies on marine spills in Canadian waters have been commissioned by various parties over the last few years.¹⁰ Although we do not claim any specific expertise when it comes to the science of risk assessment, we did not see any conclusions in these studies that would support the need for an outright ban on tanker traffic in any specific location south of 60th. In fact, the risk assessment study that most specifically addressed the tanker traffic on the B.C.'s North Coast – i.e., Transport Canada's TERMPOL Review mentioned above- did not identify risks that could not be adequately managed.

From our perspective, we are looking for a coherent and informed (science based approach) to the assessment of acceptable risks – when considering measures such as banning specific vessel traffic in Canadian waters.

Legal aspects

Lastly, but of equal importance, we would argue that implementation of the proposed moratorium raises legal and diplomatic issues – including Canada's ability under international law to deprive tankers from the right of innocent passage (and freedom of navigation) off the B.C.'s North Coast (including the Dixon Entrance and the Hecate Strait). With the implementation of such a moratorium, Canada would attempt to officially claim that these are internal waters. We expect that this kind of unilateral action on the part of Canada will lead to strong diplomatic reaction not only from the United

⁸ Transport Canada - TERMPOL Review Process Report on the Enbridge Northern Gateway Project, 20/02/2012.

⁹ Tanker Safety Expert Panel Report, note 1, page 10.

¹⁰ *Risk Assessment for Marine Spills in Canadian Waters, Phase 1: Oil Spills South of 60th Parallel*, prepared for Transport Canada by WSP Inc, January 2014 and Clear Sea Report, note 1.



States but also from other countries that are signatories to the United Nations (U.N.) Convention on the Law of the Sea.

International law provides for the designation of particularly sensitive sea areas; whereby coastal states can apply stricter measures – including areas to be avoided or routing measures – after having completed an informed risk assessment process under the U.N. Convention on the Law of the Sea. Any discussions on restricting the movements of tanker traffic off the B.C.'s North Coast should take place within the international framework.

Respectfully submitted,

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The Shipping Federation of Canada (The Federation), incorporated by an Act of Parliament in 1903, acts as the pre-eminent voice of ship-owners, operators and agents involved in Canada's world trade. Its overall objective is to work towards a safe, competitive and environmentally sustainable marine transportation system.



ANNEX A

PROPOSED AMENDMENTS TO THE *PILOTAGE ACT*

Re-establishing the Primacy of the Pilotage Authorities to Regulate Safety

Amend the *Pilotage Act* to ensure that the regulator (i.e., the pilotage authority) is the party which decides whether a change to the regulatory regime meets the objective of a safe and efficient pilotage service in accordance with its mandate under the *Pilotage Act*. More specifically:

- Amend the final offer selection (FOS) process to ensure that arbitration awards do not contradict the existing legislative and regulatory framework;
- Review and strengthen the regulatory powers of the pilotage authorities under section 20 of the *Pilotage Act* in order to ensure that the pilotage authorities have the necessary powers at their disposal to regulate safety aspects of the pilotage service;
- Review and amend existing pilot contracts to ensure that any safety-related matter that falls under the scope of the pilotage authorities' power is withdrawn, and that any provisions requiring regulatory approval/amendment are not be included in future service contracts.

We also refer you to our brief submitted to Transport Canada on September 16, 2016, as part of the department's consultations on developing a long-term agenda for the marine transportation sector.