



**COMMENTS ON TRANSPORT CANADA'S PROPOSED FRAMEWORK
FOR DETERMINING AND APPLYING AMPs UNDER THE CANADA SHIPPING ACT, 2001**

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The Shipping Federation of Canada is the national voice of the owners, operators and agents of ocean ships that carry Canada's international trade between Canadian ports and ports throughout the world. We appreciate this opportunity to comment on Transport Canada's discussion paper entitled "Updating Administrative Monetary Penalties under the *Canada Shipping Act, 2001*," which proposes a revised framework for determining and applying AMPs.

All of the vessels owned and operated by our members are 100 metres in length or greater, and they would therefore fall under the class of violators who would be exposed to the highest penalty levels set out in the framework. Given the foregoing, it is important that the framework be as clear and transparent as possible, not only from a Transport Canada perspective, but also from the perspective of an international shipowner / operator seeking to understand their regulatory obligations when operating in Canadian waters and the potential consequences of non-compliance. It is with this objective in mind that we offer the following comments on the proposed framework:

Gravity of the Violation

- The criteria for the escalating levels of gravity (from minor to medium to serious) are quite general and in some cases subjective, which makes it difficult to clearly differentiate among the three levels. As an example, under the proposed framework, violations related to record-keeping and reporting would appear to fall under the "minor" category and are defined as being administrative in nature. However, some of the violations falling under the "medium" category would appear to be similarly administrative in nature (reporting of discharges, oil-handling facility reporting, etc.), making it challenging to see where one category ends and the other begins. The same can be said of the transition from the "medium" to "serious" category, insofar as a failure to comply with any of the regulatory requirements listed under the "medium" criteria could potentially create a risk of harm to people or the environment (thereby also making them into "serious" violations).

We believe it would be useful for the framework to provide additional details regarding specific violations that would fall under each of the three levels of gravity, particularly as relates to the transition from one level to the next. From a shipowner / operator's perspective, such information is particularly important in a context where the penalty ranges increase so dramatically from one level of gravity to the next (i.e. from between \$2,100 and \$10,000 for "minor" violations; to between \$21,000 and \$100,00 for "medium" violations; to between \$52,500 and \$250,000 for "serious violations), and where the previous maximum penalty of

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\$25,000 is now at the lower end of the "medium" gravity scale, and has increased tenfold at the highest end of "serious" scale.

Aggravating Factors

- Our main concern with the proposed list of aggravating factors is that it combines factors that can be objectively quantified ("history of non-compliance") with factors that are more subjective in nature and are therefore more challenging to assess ("actual or potential harm"). Although we appreciate that the proposed scale of severity for the "actual or potential harm" factor does provide some detail as to how severity is to be assessed, this is primarily in relation to impacts that are physically measurable (e.g., a pollution incident involving an oil spill of X litres). In contrast to this, the framework provides very little detail as to how it would assess the severity of impacts related to "biodiversity, ecosystems or habitats", or those related to "death, harm or harassment of wildlife species," leaving these categories open to a great deal of subjective interpretation on Transport Canada's part. Given that the severity level of the "actual or potential harm" factor can increase the baseline penalty for a shipowner by as much \$17,500 for a medium violation and by as much as \$43,750 for a serious violation, it would be useful for Transport Canada to provide additional detail as to how it will assess severity levels for this factor, particularly as relates to the impacts of non-compliance on biodiversity, ecosystems, habitats or wildlife species.

As a final comment on the proposed list of aggravating factors, we are somewhat puzzled by the "economic benefit" factor and the basis on which this would be assessed, and would therefore appreciate additional detail on this specific point.

Mitigating Factors

- We do not have any specific concerns regarding the list of mitigating factors and fully support the proposal to assign the self-reporting factor the most weight of the three factors set out in the framework. Not only will this serve as an incentive to self-report instances of regulatory non-compliance, it will also underscore the fundamental premise of the AMPs regime, which has an overall objective of promoting regulatory compliance as opposed to punishing violators.

We trust that Transport Canada will find these comments useful as it works to develop proposed amendments to the AMPs regulations, and we look forward to commenting on those regulations when they are pre-published in the *Canada Gazette* next year. In the meantime, we would be happy to provide any additional information or engage further with TC as required.

Sincerely,



Karen Kancens
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