



Government
of Canada Gouvernement
du Canada
Embassy
of Canada Ambassade
du Canada

501 Pennsylvania Avenue NW
Washington, D.C. 20001

October 15th, 2024

Secretary David Eng
Federal Maritime Commission
800 North Capitol Street NW
Washington, DC 20573-0001

**Re: Extension of time for decision in investigation into Canada's Ballast Water
Regulations under 46 U.S. Code § 423**

Dear Secretary Eng,

Canada takes note of the Commission's ninety-day extension for a decision in its investigation into Canada's *Ballast Water Regulations* and the September 12, 2024 invitation to provide comments. Canada is pleased to provide comments reflecting developments since its letter of June 21, 2024 (attached) to the Commission.

These comments are without prejudice to any Canadian position, rights or obligations, including those that may exist pursuant to international law, for example under treaties between Canada and the United States.

Further to Canada's June 21, 2024, letter to the Commission, Canada reiterates its position that the Canadian *Ballast Water Regulations* do not satisfy either of the two conditions described in 46 CFR § 42302 in that United States carriers are not adversely affected in oceanborne trade, and that similar conditions exist in the United States for Canadian and other foreign-flagged vessels¹. Accordingly, Canada recommends that the Commission conclude its investigation as grounds do not exist for Commission actions against Canadian flagged vessels.

¹ The two conditions identified in 46 CFR § 42302 – Investigations – are (1) adversely affect the operations of United States carriers in United States oceanborne trade; and (2) do not exist for foreign carriers of that country in the United States under the laws of the United States or as a result of acts of United States carriers or other persons providing maritime or maritime-related services or in the United States.

Exemption processes available to Canadian and U.S. Carriers

On January 23rd, 2024, Transport Canada published policies outlining the processes for domestic and foreign-flagged vessels to request an exemption to the September 2024 regulatory timeline for installation of ballast water management systems (BWMS). Subsequently, on July 25th, 2024, Transport Canada issued a detailed procedural framework for foreign-flagged vessels in Canadian waters to follow when requesting an exemption to install ballast water management systems. Transport Canada ensured that the Lake Carriers' Association was advised of the release of this framework. Since these policies were published, Transport Canada has received exemption requests from carriers in both Canada and the United States.

The *Canada Shipping Act, 2001*, and subsection 5(1) of the *Ballast Water Regulations* provide the legal authority for Transport Canada to grant domestic vessels an exemption on the timeline for installation of a BWMS through the Marine Technical Review Board process (MTRB). The MTRB is established through section 26 of the *Canada Shipping Act, 2001* and provides a mechanism for Canadian flagged vessels and Canadian seafarers to apply for regulatory exemptions. To ensure parity with domestic vessels and in furtherance of Canada's obligations under the International Maritime Organization's *Ballast Water Management Convention*, foreign vessels are able to apply to the Minister of Transport for exemptions to requirements in the *Ballast Water Regulations* pursuant to subsection 5(2) of that regulation.

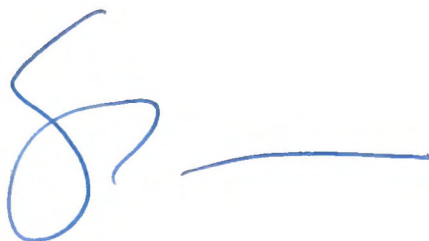
We underscore that the outcomes available to vessels are the same, irrespective of flag. Under both processes, vessels can apply for and receive extensions on the installation of a BWMS and there is no differential treatment applied.

Transport Canada received six exemption requests from U.S. Great Lakes operators. On October 14, 2024, the Department issued exemptions for three of these ships that were built post 2009 and required by the *Ballast Water Regulations* to install BWMS. The remaining three ships will be informed that they do not require an exemption based on the regulations. This represents the entirety of the U.S. Great Lakes fleet affected by the 2024 compliance date, whereas only a portion of the affected Canadian fleet has requested and received exemptions, with many vessels having already installed BWMS.

In closing, the protection of our shared Great Lakes waters from aquatic invasive species is of paramount importance to Canada. The *Ballast Water Regulations* will protect these waters from the harmful economic and environmental impacts of invasive species. In light of these and past comments, and the progress made through ongoing binational

efforts, Canada respectfully requests that the Commission conclude this investigation as unfounded.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a horizontal line.

Sara Cohen
Deputy Head of Mission (Foreign Policy and National Security)

