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Caitlyn E. Stewart
Vice President – Regulatory Affairs

October 15, 2024

Mr. David Eng
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W
Washington, D.C. 20573

RE: Notice of Extension of Time
for Decision in Investigation Into
Conditions Affecting United States
Carriers in Connection With
Canadian Ballast Water Regulation
in the United States/Canada Great
Lakes Trade (89 FR 74273) –
Docket No. FMC-2024-0008

Dear Mr. Eng,

We appreciate the opportunity to comment on the Federal Maritime Commission's (FMC) notice of extension of time for a decision in its investigation into conditions affecting United States carriers in connection with Canadian ballast water regulation in the United States/Canada Great Lakes trade.

The American Waterways Operators (AWO) is the tugboat, towboat, and barge industry's advocate, resource, and united voice for safe, sustainable, and efficient transportation on America's waterways, oceans, and coasts. Our industry is the largest segment of the nation's 40,000-vessel domestic maritime fleet and moves 665 million tons of cargo each year safely, sustainably, and efficiently. The industry's exemplary operating record reflects a deep commitment to safe and effective ballast water management procedures. AWO's prior engagement with the U.S. Environmental Protection Agency and the U.S. Coast Guard to set standards for ballast water and other vessel discharges has been guided by our belief that the regulations must provide for a high level of environmental protection while also preserving the safety and economic efficiency of barge transportation. In the spirit of cooperation toward these shared goals of environmental protection and efficiency, and on behalf of AWO's ten member companies operating U.S.-flag vessels in the Great Lakes, we are pleased to offer these comments.

For Canadian-flag vessels, requests for exemptions or extensions to the Canadian ballast water management regulations are made through Canada's Maritime Transportation Review Board, with the assurance that the entire process, inclusive of when applicants are notified of approval or denial, takes up to eighteen days at most. However, until June 7, 2024, there existed no viable option for a non-Canadian-flag vessel to apply for an exemption or extension to any of Transport Canada's (TC) requirements. Though an application process for non-Canadian-flag vessels seeking exemptions now exists, the process and forms were released only 44 days before the September 8, 2024 compliance deadline for vessels built after 2008 and lacked a clear decision timeline. TC has since informed the Lake Carriers' Association that it will take 35 to 45 days to approve an exemption for non-Canadian-flag vessels.

On August 28, 2024, TC issued a bulletin stating that all post-2008 vessels must be in compliance with its ballast water regulations by September 8, 2024, despite the relayed decision timeline of 35 to 45 days. As of September 5, 2024, several post-2008 U.S.-flag vessels applied for exemptions, but as of October 1, 2024, none have received a decision nor loaded or unloaded cargo in Canadian ports due to pending exemption applications. The current discrepancies in the processing of Canadian versus U.S.-flag vessel exemption applications, along with the infeasible compliance deadline given the expected decision window, render the exemption request process entirely impractical for U.S.-flag vessels.

Furthermore, considering the long life of vessels operating in the Great Lakes, it is highly likely that many Great Lakes towing vessels and barges constructed before 2008 will be in service in 2030, and thus, will be required by the Canadian regulations to install ballast water treatment systems in order to continue to engage in U.S./Canada trade. However, there is no certainty that a system that is compatible with towing vessel design and operation will be commercially available and economically achievable by the time that pre-2008 U.S.-flag vessels operating in the U.S./Canada trade will be required to comply with the Canadian regulations. Towing vessels have unique physical and operational constraints that make the installation and operation of existing ballast water treatment systems impractical, as recently recognized by the U.S. Environmental Protection Agency, which has exempted them from the U.S. numeric ballast water discharge standard "on the finding that ballast water technologies are not available or economically achievable for this universe of smaller vessels."¹

With such limitations, the process of identifying and procuring a workable ballast water treatment system, developing plans to retrofit the vessel to accommodate the system and analyzing its impacts on the vessel's safety and stability, and entering into a contract with a shipyard to do the work will effectively advance the compliance deadline by at least two to three years. Additional, time-consuming approvals from recognized classification societies and the U.S. Coast Guard may also be required if significant changes to the vessel are needed to install the system. The total costs of compliance with the Canadian regulations, inclusive of the cost of the ballast water treatment system and the cost to retrofit the vessel, will be over \$1 million per vessel.

Due to the current discrepancies in the processing of exemptions or extensions for post-2008 Canadian versus U.S.-flag vessels, as well as the time and cost of complying with the Canadian

¹ 89 Federal Register 82100.

regulations for pre-2008 vessels, it is paramount that the FMC resolve the adverse effects of TC's regulations to safeguard U.S.-flag vessels and uphold the Great Lakes trade at large.

Thank you again for the opportunity to submit comments on the FMC's extension of time for a decision in its investigation into conditions affecting United States carriers in connection with Canadian ballast water regulation in the United States/Canada Great Lakes trade. We would be pleased to answer any questions or provide further information to help the FMC in its decision-making process.

Sincerely,

A handwritten signature in cursive script that reads "Caitlyn E. Stewart". The signature is written in a dark ink and is positioned above the typed name.

Caitlyn, E. Stewart
Vice President – Regulatory Affairs