

## **Transport Canada Marine Safety: Domestic Vessel Regulatory Oversight**

### **A Position by the Union of Canadian Transportation Employees (UCTE)**

#### **1. Transport Canada Marine Safety (TCMS): The current state of play**

Transport Canada has developed a complex SMS roll-out and regulatory delegation structure that puts a tremendous strain on TCMS resources and abilities. They are proposing a framework with multiple elements including Delegated Statutory Inspection Program (DSIP), Canadian Alternate Compliance Program (CACP), Small Vessel Compliance Program (Blue Decal Initiative), SMS Implementation across multiple ship sizes, Revisions to the Classification Society Agreements and delegations, revised codes for Recognized Organizations, contracting out of Coast Guard inspections and compliance, and more.

As Transport Canada is attempting to roll out this complex inspection and delegation structure and reform, the following considerations are critically important:

- The Government of Canada is in the process of completing the National Shipbuilding Procurement Strategy – a strategy that will involve more than \$30 billion in new shipbuilding investment and a revitalization of the Coast Guard and Navy fleets.
- The Government of Canada has removed tariffs on a wide range of ships indicating the beginning of a revitalization of the Canadian commercial shipping fleet, particularly those operating in the Great Lakes... Large ferry operators such as Marine Atlantic and BC Ferries have recently put in large new ferry orders. BC's Seaspan has recently ordered a full new range of tugboats from Turkey.
- The Transportation Safety Board is reporting continuing safety problems, particularly with small vessels.
- The five contracted and certified Classification Societies are equipped to certify and inspect to class, but there are many Canadian ships that are not in class. The cost of converting to class can be prohibitive.
- TCMS regulations are complex, difficult to communicate and are not appropriately codified to effectively delegate to the private sector. Until TCMS regulations are simplified, modernized, harmonized and easily communicated, it will be very difficult to implement the Alternative Compliance program- a program which assumes that the classification societies and other delegated private sector authorities could effectively audit and inspect to Transport Canada regulations and standards.
- There is ambiguity as to whether or not Transport Canada intends to delegate inspections or to maintain inspection oversight. In some contexts, full delegation implies no TCMS oversight, while in others it does.
- SMS policy as it relates to regulatory compliance is in flux and has not yet been complete. The ability of fleet and small ship owners to implement SMS is impaired by a lack of clarity on TC requirements for SMS.
- The Coast Guard (CCG) is proposing to contract out inspections for all its 110 odd vessels feet.CCG and Public Works and Government Services Canada (PWGSC) are proceeding with this contracting process despite the fact that most CCG vessels are not

in class, it would be expensive to bring these vessels into class, and the regulatory requirements for private sector inspections out of class are vague, unclear and difficult to explain.

- Despite the aging Canadian fleet and the new retrofits and arrivals, TCMS Inspectors are inspecting less, not more.

## **2. Where is Marine different than other Modes and where it is the same?**

UCTE has taken the position with the highest levels at Transport Canada (TC) that TC should implement a cross-modal policy framework to as great an extent as possible. A cross modal policy framework would incorporate the following principles and structures:

- There should be a Whistleblower legislative, regulatory and policy framework that protects transportation company workers and government inspectors and workers. We have proposed an arms-length government office. In our view, there is no reason why this office could not implement whistleblower protections for all modes.
- There should be clear and unambiguous guidance that TC Inspection Oversight will always remain in place and be more robust in a SMS environment.
- If TC is going to delegate Ministerial authority to inspect, the government needs to ensure that conflicts of interest cannot take place. You cannot have a company inspecting a shipping company when that same inspecting company is also contracting with the shipping company for other services.
- Contracting out to the private sector is well established (in all modes) when it comes to new builds and retrofits. Given the large financial commitments to modernizing the Canadian marine fleet, it seems apparent that private sector contracting out should be focused in these areas where there is significant experience and success. These are also the areas where the existing agreements with Classification Societies are most clear and unambiguous.

When it comes to the principles above, we fail to see why Marine is different than other modes. A commitment to regulatory oversight, whistleblower protections, conflict of interest avoidance and a focus on retrofits and new builds should precede all TCMS changes.

## **3. Specific Recommendations for TCMS**

- SMS is supposed to be an “extra layer” of safety as it engages and empowers transportation operators to have safety management accountability systems in place. It seems wrong that TCMS should be moving forward more quickly with delegations than they are with SMS guidance and implementation. Scarce resources should be focused on SMS rollout.
- There needs to be clarity from TCMS management- clarity which clearly states that we will always have government inspector oversight.
- The DSIP Approach is viable for ships in class. There should be no TCMS pressure for operators to convert existing ships to class.
- The CACP is non-viable until such time as Canadian regulations are simplified, harmonized, easy to communicate and understood by both the delegator and the regulated.

- TCMS scarce resources should be focused on modernizing regulations and on rolling out an effective SMS framework.
- Contracted classification society scarce resources should be focused on new builds and retrofits.
- TCMS should discourage the Coast Guard from its initiative to contract out inspections. Most CCG vessels will be outside class and the classification societies will have difficulty inspecting to TC regulations that are unclear, complex and ill defined. CCG should focus its contracting out to new builds and retrofits and continue to rely on TCMS Inspectors for regulatory compliance.