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THE *CANADA MARINE ACT* – BEYOND TOMORROW

Report of the Review Panel
to the Minister of Transport

TO THE HONOURABLE MINISTER OF TRANSPORT

Dear Minister:

In accordance with your request of May 26, 2002, that the *Canada Marine Act* Review Panel undertake consultations with marine stakeholders pursuant to the review specified in section 144 of the *Canada Marine Act* (CMA) and your Terms of Reference for the review, the CMA Review Panel is pleased to present to you its Final Report – *Canada Marine Act: Beyond Tomorrow*.

Respectfully submitted,



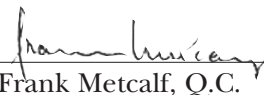
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Introduction

We are a trading nation. One in three Canadian jobs depends upon our export performance. The current economic recovery is export-driven, and a safe, affordable, integrated national transportation system is essential to Canada's competitiveness at home and abroad. A vital component of this system is marine transportation. The marine sector contributes \$2 billion a year to the gross domestic product and moves 224 million tonnes of international trade. *Canada needs a clearly defined marine strategy which will serve as one of the key elements of the economy and support the growth and development of our international trade. (emphasis added)*

These thoughts might have been penned as an introduction to this report, but in fact, that message – just as valid today and probably more urgent than ever – forms the basis of the introduction to a 1995 report to Parliament by the House of Commons

Standing Committee on Transport, which metamorphosed into the National Marine Policy of December 1995. Several years later the *Canada Marine Act* (CMA) was passed to support and breathe life into the National Marine Policy.

introduction

Most stakeholders acknowledge that the CMA has contributed to the improvement of marine transportation. The 19 new Canada Port Authorities created by the CMA have enjoyed increased autonomy and efficiency in many areas of their management and operation. Commercialization of the management and operations of the St. Lawrence Seaway and divesture of ferry services reflect similar successes. Stakeholders are nonetheless concerned that the marine transportation sector lacks the legislative provisions and governmental encouragement to generate the optimum conditions for increasing and maximizing the system's benefits to our country.

Pursuant to the requirements of the CMA, the Minister of Transport, the Honourable David M. Collenette, commenced a review of the operation and provisions of the CMA with the appointment of a Review Panel in May 2002. Marine industry stakeholders presented the Panel with thousands of pages of detailed and substantive submissions and recommendations for improvements to the CMA and implementation of the National Marine Policy. The presentations reflect a

consensus that the CMA needs to be improved to achieve its goals, which include implementing

...a National Marine Policy that provides Canada with the marine infrastructure that it needs and that offers effective support for the achievement of local, regional and national social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives. (section 4 (a))

The Panel would like to thank everyone who participated in the CMA Review for their time and effort providing such substantive and detailed submissions and presentations.

Some presentations stated, and the Panel believes, that Canada is losing hard-won international traffic to competing U.S. ports and is at risk of continuing to do so. Others suggested that rising Canadian transportation costs are beginning to erode our competitiveness. Still others cited the lack of suitable infrastructure as a real, imminent threat to the future

of communities and regions with substantial reliance on marine transportation. While many submissions spoke about a particular community, industry or region, the inescapable fact is that marine transportation is a vital, integral part of the macro economy, with significant effects on the standard of living of all Canadians.

The CMA embodies the leadership role properly assumed by the Government of Canada in its pursuit and implementation of the National Marine Policy. Accordingly, submissions to the Panel, almost without exception, reflected a high degree of expectation that the Government would engage in proactive leadership, recognizing and resolving the serious, urgent issues facing all sectors of the marine mode of transportation. The Panel endorses stakeholders' expectation as it approaches the difficult task of formulating its recommendations.

Globalization and sweeping changes in the economics of marine transportation are occurring on the world stage and especially here in North America. The Panel believes that important aspects of the objectives of the National Marine Policy, and hence the CMA, urgently require re-examination and revision. The Panel respectfully submits that its recommendations and observations, which reflect the majority of presentations and submissions, will significantly enhance the marine mode by providing a positive impetus toward achieving the goals set by the CMA.



Chapter 1

The Review Process and the Panel's Mandate

The Process

On May 26, 2002, the Minister of Transport, announced the appointment of a four-member Panel of industry experts to undertake consultations with stakeholders and to make recommendations based on these consultations as part of the five-year review of the CMA (the Review). The Panel was intended to provide regional representation and consisted of Mr. Richard Gaudreau (Quebec) – Chair; Mr. Allan Donaldson (Ontario); Mr. David Gardiner (British Columbia); and Mr. Frank Metcalf, Q.C. (Nova Scotia).

Simultaneously with this announcement, a Guidance Document was made available for distribution to interested parties. The document defined the objectives of the Review for the Panel and for stakeholders. It contained background information on

how the CMA was developed, an overview of the marine transportation industry, and a summary of the main issues with respect to the CMA that had been raised to date.

A Review Secretariat was established in Transport Canada's Marine Policy Directorate to support the Panel throughout the review process and to assist the Panel members in carrying out their mandate.

During the summer of 2002, the Panel wrote to marine transportation stakeholders, provincial governments, and federal departments and agencies to solicit their participation in the Review. A series of public consultations was scheduled for the fall of 2002, and notice was provided on the CMA Review web site as well as in newspapers across the country. The Panel travelled to 11 cities in seven provinces in the course of these cross-Canada consultations: St. John's,

Halifax, Saint John, Quebec City, Montreal, Ottawa, Toronto, Thunder Bay, Winnipeg, Vancouver and Prince Rupert.

The Panel received more than 140 written briefs and heard more than 75 presentations from individuals, industry groups, labour organizations, transport companies, provincial, territorial, and municipal

governments, and federal departments and agencies.

A list of submissions appeared on the CMA Review web site, and copies were made available on request (unless the authors requested confidentiality).

A complete list of organizations and individuals that submitted briefs and/or participated in the Panel's consultations can be found in Appendix A.

The Panel received more than 140 written briefs and heard more than 75 presentations from individuals, industry groups, labour organizations, transport companies, provincial, territorial, and municipal governments, and federal departments and agencies.

The CMA Review web site, launched concurrently with the announcement of the Panel's appointment, proved a valuable communication tool. The site was maintained and updated by the CMA Review Secretariat. Dates and locations of public consultations were available there, together with a list of presenters appearing at the various locations and the written briefs received. The site facilitated electronic submission of briefs

and allowed participants to register for public consultations and address questions to the CMA Review Secretariat.

The Mandate

The Review was constituted under section 144 of the CMA:

A review of the provisions and operation of this Act shall be completed by the Minister during the fifth year after this Act is assented to. The Minister shall cause a report of the results of the review to be laid before each House of Parliament on any of the first fifteen days on which that House is sitting after the report is completed. (emphasis added)

The context of the Panel's mandate is set out in the Guidance Document: the Review is not intended to change the overall principles or objectives of the Government of Canada outlined in the National Marine Policy and the CMA. The Guidance Document directs the Panel to address the implementation issues that have arisen in the four years since passage of the CMA and to make:

(i) Recommendations on amendments to the *Canada Marine Act* that accord with the basic principles of the legislation and represent in essence a fine-tuning of the Act to address implementation issues; and

(ii) Observations on other issues identified in submissions from stakeholders that call for changes which extend beyond the scope of the implementation issues addressed in the Panel's Report.

In carrying out its mandate, the Panel understood that it was expected to bear in mind the overall principles set out in the December 1995 National Marine Policy and in section 4 of the CMA. The full text of the latter provision appears below:

National Marine Policy

4. *It is hereby declared that the objective of this Act is to:*

(a) *implement a National Marine Policy that provides Canada with the marine infrastructure that it needs and that offers effective support for the achievement of local, regional and national social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;*

(b) *base the marine infrastructure and services on international practices and approaches that are consistent with those of Canada's major trading partners in order to foster harmonization of standards among jurisdictions;*

(c) *ensure that marine transportation services are organized to satisfy the needs of users and are available at a reasonable cost to the users;*

(d) *provide for a high level of safety and environmental protection;*

(e) *provide a high degree of autonomy for local or regional management of components of the system of services and facilities and be responsive to local needs and priorities;*

(f) *manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbour is located;*

(g) *provide for the disposition, by transfer or otherwise, of certain ports and port facilities; and*

(h) *coordinate with other marine activities and surface and air transportation systems.*

The Panel is of the opinion that section 4(a) of the CMA expresses a principle of fundamental and paramount importance. It is also the Panel's view that development and execution of any government policy affecting marine transportation must reflect not only this principle but also the other elements articulated in section 4, regardless of whether such policy has or will be implemented under the CMA or other legislation. Stakeholders believe, and the Panel respectfully submits, that one objective of the 1995 National Marine Policy :

– shift the financial burden for marine transportation from the Canadian taxpayer to the user –

is incompatible with the ultimate goals of the CMA.

Given other countries' approach to their marine transportation infrastructure, particularly that of the United States, stakeholders submit and the Panel agrees that the Government of Canada needs to foster and increase development and maintenance of infrastructure to achieve the objectives of the CMA and meet the needs of users.

The Panel, like stakeholders, found it difficult to draw a line between implementation issues and matters extending beyond implementation of the CMA or for that matter between 'recommendations' and 'observations'. Matters that, in the Panel's view, do not extend clearly beyond implementation issues are the subject of recommendations in this report. Other issues are the subject of observations. The Panel believes, however, that the recommendations and observations are equally important and inextricably intertwined.

The report makes two general recommendations and a number of specific recommendations concerning implementation issues related to Canada Port Authorities, the St. Lawrence Seaway, public ports, pilotage and ferries. The last chapter contains observations considered by the Panel and by a vast majority of stakeholders across Canada as fundamental to the guiding principles of the CMA.



Chapter 2

The *Canada Marine Act* – Its Genesis and the Panel Perspective

In 1994, recognizing that large segments of Canada's transportation system were operating at less than optimum efficiency, and seeking to reduce governmental involvement in the management and financial support of the system, the Minister of Transport of the day set out a comprehensive strategy to modernize all aspects of Canadian transportation and prepare it for the 21st century. To achieve its objectives, the Government of Canada initiated several studies concerning all modes of transportation. At the request of the Minister of Transport, the House of Commons Standing Committee on Transport undertook a comprehensive study of the national marine sector in early 1995. The Committee travelled across the country and heard from interested parties, including provincial governments, municipalities, organized labour, shippers, and other marine industry stakeholders.

The introduction to the SCOT Report, entitled *A National Marine Strategy*, included the opening statement quoted earlier in this report and also stated:

The goal of this review is to develop an efficient, reliable, competitive marine transportation system at a cost that will ensure that we remain competitive in world markets while at the same time recognizing that safety and the protection of the environment are of paramount importance. *(emphasis added)*

The SCOT Report contained 33 recommendations, many of which were subsequently addressed by the government.

After receiving the SCOT Report in May 1995, Transport Canada officials held formal meetings with stakeholders across the country and consulted widely on

marine policy issues. In December 1995, the government published the National Marine Policy and announced its intention to enact legislation containing comprehensive changes to the ports, St. Lawrence Seaway, ferries and pilotage components of the marine industry. Its stated objectives were as follows:

- Ensure affordable, effective and safe marine transportation services;
- Encourage fair competition based on transportation rules applied consistently across the marine transport system;
- Shift the financial burden for marine transportation from the Canadian taxpayer to the user;
- Reduce infrastructure and service levels where appropriate, based on user needs; and
- Continue the Government of Canada’s commitment to safe transportation, a clean environment, and service to designated remote communities. The government will also maintain its commitment to meeting all constitutional obligations.

Reflected throughout the National Marine Policy is the principle of commercialization. In some cases, commercialization means creating new management structures to make operations more efficient. In other cases, it means reducing costs to the taxpayer by accounting for the real costs of a service, making sure costs are clear and transparent to users, and designing more efficient charging systems. It also means letting users decide what services they will receive and pay for. It may mean letting the private sector deliver certain services. Commercialization, in all cases, means eliminating unnecessary regulation and outdated legislation.

(page 3)

Including the concept of governmental cost recovery in keeping with industry needs, the National Marine Policy set out an ambitious agenda. It called for the establishment of a National Ports System to include what then appeared to be financially self-sufficient ports deemed vital to domestic and international trade. These national ports were to be managed by Canada Port Authorities. Ports falling into a second category – Regional/Local Ports – were to be transferred to provincial governments, municipal authorities, community organizations, private interests and other groups over a six-year period. Remote ports were to

remain under Transport Canada unless local groups expressed an interest in acquiring them. The Government of Canada would pursue commercialization of the operations of the St. Lawrence Seaway and modernization of pilotage services. Ferry services would also be commercialized, but constitutionally mandated services would continue to receive federal support.

Both section 5 of the CTA and section 4 of the CMA set goals to ensure that Canada’s marine transportation mode supports local, regional and national socio-economic objectives and continues to contribute to Canada’s competitiveness and trade.

To accomplish these goals a new, comprehensive law governing the marine sector was required. In addition, the concept of governmental cost recovery for all modes of transportation would be introduced through enactment of the *Canada Transportation Act (CTA)*, while the *Oceans Act* would enshrine cost recovery for marine services fees. The CTA was passed in May 1996, the *Oceans Act* in December 1996, and finally the CMA in June 1998.

In the spring of 2000, a review of the CTA was initiated, resulting in a report entitled *Vision and Balance*, dated June 2001. That report addressed broad issues concerning all modes of transportation and some

aspects of the marine transportation sector. *Vision and Balance* is an important document whose recommendations have led to proposed amendments to the CTA. *Straight Ahead – A Vision for Transportation in Canada*, released by the Minister of Transport in February 2003, provides a framework for the Government of Canada to address key challenges facing the Canadian

transportation system over the medium to long term. The Panel respectfully suggests the framework and subsequent amendments to the CTA and CMA will be incomplete without recognizing and taking into account the advantages and benefits of marine transportation and its contribution to the Canadian economy.

Both section 5 of the CTA and section 4 of the CMA set goals to ensure that Canada’s marine transportation mode supports local, regional and national socio-economic objectives and continues to contribute to Canada’s competitiveness and trade. Stakeholders and the Panel believe that governmental cost recovery and financial self-sufficiency requirements will impair the achievement of the stated principles and objectives of section 5 of

the CTA and of section 4(a) of the CMA. It is with these concerns in mind that the Panel deliberated on and arrived at its recommendations and observations, hoping to bring clarity and consistency to the CMA in furtherance of the goals of the National Marine Policy and

ultimately to "successfully meet the economic, social and environmental needs of the next decade and beyond, and...improve the quality of life of Canadians". (*Transport Canada press release No. H 013/03, February 25, 2003*)

Chapter 3

Context of the Review and the Issues

Marine transportation is an integral component of domestic and international trade. Domestic marine transportation competes with other Canadian modes of transportation, while Canadian marine transportation routes and infrastructure, including the St. Lawrence Seaway and Canadian ports, compete fiercely with U.S. marine routes and port

facilities. International marine transportation is the vital link by which Canada competes in international markets. The system for moving cargo is an essential element in the competitiveness of our country. Ports and marine activities have a major impact on local, regional and national socio-economic objectives.

Canada's economic viability depends increasingly on international trade. The

The system for moving cargo is an essential element in the competitiveness of our country. Ports and marine activities have a major impact on local, regional and national socio-economic objectives.

Government of Canada invests millions of dollars to encourage international trade through organizations such as the Business Development Bank of Canada, Export Development Canada, the Canada Commercial Corporation, Export Assistance Programs, Team Canada, and the Innovation Strategy. In 2001, Canada's non-U.S. international trade

represented \$51 billion in exports and \$125 billion in imports. Although the marine mode has a low profile outside shipping circles, it is the dominant mode of transport to and from non-U.S. countries, accounting for nearly 70% of exports and 40% of imports by value and dramatically higher percentages of import and export tonnage. Accordingly, the marine mode is an essential ingredient of Canada's international trade (*see Table 1*).

Table 1
Trade Between Canada and Non-U.S. Countries, by Mode and Sector, 1997-2001

Year	Share (%)					
	Billions of dollars	Road	Rail	Marine	Air	Other
Exports¹						
1997	54.2	9.1	1.7	72.8	16.4	0.0
1998	48.5	7.8	1.3	71.3	19.6	0.0
1999	46.8	6.6	1.7	70.9	20.8	0.0
2000	53.6	6.3	1.3	69.6	22.8	0.0
2001	51.0	6.1	1.7	67.9	24.4	0.0
Imports						
1997	88.5	31.3	4.5	40.1	22.0	2.1
1998	95.0	35.9	3.6	37.5	21.8	1.1
1999	104.7	34.7	3.3	38.2	23.3	0.5
2000	127.2	30.9	3.5	41.3	23.8	0.6
2001	124.6	32.2	3.9	40.3	22.0	1.6
Year	Share (%)					
	Million tonnes ²	Road	Rail	Marine	Air	Other
Exports						
1997	189.9	1.0	0.2	98.4	0.4	0.0
1998	183.6	0.9	0.2	98.6	0.3	0.0
1999	182.3	1.7	0.3	97.7	0.3	0.0
2000	168.3	2.6	0.7	96.3	0.4	0.0
2001	184.4	2.4	0.3	96.2	1.2	0.0
Imports						
1997	83.4	7.4	1.0	79.7	1.4	10.4
1998	81.2	12.1	1.4	76.5	2.1	8.0
1999	78.0	11.6	1.5	80.7	1.9	4.3
2000	85.3	9.3	1.2	84.8	2.2	2.4
2001	85.2	10.3	1.3	78.8	2.0	7.5

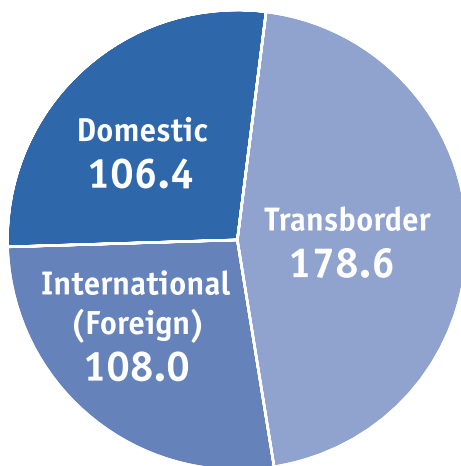
¹ Total exports, including domestic exports and re-exports. Preliminary data for 2001.

² Tonnes estimated based on weight conversion factors developed by Statistics Canada.

Source: Statistics Canada, Cat. 65-202 and 65-203: special tabulations: Transport Canada, adapted from Statistics Canada.

The economic impact of marine activities is further demonstrated by the quantities of goods carried in the domestic, transborder and international trade (*Figure 1*).

Figure 1
Canada's Marine Cargo
Handled By Sector 2001
millions of tonnes



Source: Statistics Canada and Transport Canada

The following facts and issues were raised repeatedly by the vast majority of stakeholders, and the Panel considers them fundamental when addressing and drafting recommendations and observations aimed at ensuring that the CMA meets the Government of Canada's objectives for marine transportation:

- The CMA does not recognize expressly that the marine transportation mode is a significant

economic generator in the Canadian economy. Other countries see marine transportation infrastructure as intrinsic economic generators and facilitators of trade, while Canada appears to view the marine transportation industry as a source of revenue. For example, all levels of government in the U.S. consider marine transportation a requirement for industrial support. They have endorsed this principle through direct and indirect financial assistance and supportive legislation. Canadian and U.S. ports compete for market share of North American import and export cargoes. The U.S. treatment of its ports as economic generators creates an increasingly uneven playing field for competing Canadian ports.

- The global marine marketplace continues to be concentrated in the hands of fewer multinational entities that dictate service, port and hinterland infrastructure requirements. Globalization affects all sectors of the Canadian economy, including consumers, marine transportation service providers and users of marine transport. This trend will be further influenced by rapid changes in world markets and the international shipping industry.

- The increasingly rapid growth in world trade and international marine traffic continues to evolve, with the development of highly efficient intermodal networks throughout the North American continent. Halifax, Montreal and Vancouver all benefit from the availability of dedicated unit trains carrying containers directly from their docks to the Chicago hub within time frames that are highly competitive with U.S. ports. Shippers and shipping lines now select ports of call based on cost and service factors. As ships become larger, marine infrastructure and the industry must adapt in a timely manner.
- Despite the growth and public profile of containerized traffic, the shipment and handling of bulk goods continues to dominate the marine transportation industry in Canada. The movement of bulk commodities such as petroleum products, grain, iron ore, sulphur, potash, coal, lumber and mineral concentrates has a substantial economic impact on most Canada Port Authorities and public ports and represents a significant proportion of Canada's national economy.
- Devaluation of the Canadian dollar relative to the U.S. dollar has improved the international competitiveness of Canadian products and marine transport infrastructure providers over the past decade. No industry can succeed in the long term if it relies for success on factors outside its control. Canada's marine transportation industry must not rely on a weak dollar to support its competitiveness. For example, the Vancouver Port Authority states that a rise in the Canadian dollar to the equivalent of US\$0.70-0.72 would shift the competitive balance in favour of U.S. ports.
- Ratification of the Kyoto Protocol by the Government of Canada requires a significant reduction in the production of greenhouse gases that could be achieved more readily through increased use of marine transportation.

Chapter 4

General Recommendations

Recommendation 4.1

Based on the overwhelming majority of stakeholder submissions, the Panel endorses the addition of a preamble to the *Canada Marine Act* that explicitly sets out the historical and present-day significance of marine transportation to our national heritage, sovereignty and economy.

Explicit recognition of the industry's vital contribution to Canada's economy is essential to fostering further growth and the future success of marine transportation.

Recommendation 4.2

Because conditions in the industry are changing so rapidly, section 144 of the CMA should be amended to provide for a review of the legislation every five years.

It is evident to the Panel that stakeholders are generally pleased with the Government of Canada's initiatives since the unveiling of the National Marine Policy of divesting and commercializing the marine transportation industry. Nevertheless, there are many challenges ahead,

and the process of maintaining and further developing a vibrant marine transportation system is far from complete.

Explicit recognition of the industry's vital contribution to Canada's economy is essential to fostering further growth and the future success of marine transportation. Section 4 of the CMA lists the objectives of the National Marine

Policy, but it does not explicitly recognize the underlying importance of marine transportation to the Canadian economy. Other pieces of modern federal legislation, such as the *Oceans Act*, make ample use of preambles to set out a mission statement on behalf of the Canadian people.

Rapid and continuous change in the marine transportation industry necessitates regular review of the CMA. It is in the best interests of stakeholders and all Canadians to make every effort to review the CMA periodically and amend it as necessary, so that the National Marine Policy continues to be implemented successfully.

Chapter 5

Recommendations Concerning the Canada Port Authorities

The reality of the Canada Port Authorities (CPAs) is great diversity with respect to the origin, destination, types and volumes of cargo they handle and consequently the markets they serve. Each CPA contributes to the national economy and Canada's competitiveness. It is the Panel's view, however, that some CPAs play a direct role internationally while others play a supporting part,

albeit a highly important one, in a more regional context. The financial requirements of each CPA are different, but it seems clear that, where there is direct or indirect competition with U.S. ports, there is a more pressing need for infrastructure improvements and access to capital.

The reality of the Canada Port Authorities (CPAs) is great diversity with respect to the origin, destination, types and volumes of cargo they handle and consequently the markets they serve. Each CPA contributes to the national economy and Canada's competitiveness.

Fundamental to the health of a CPA is access to the capital necessary for renewal and expansion of infrastructure. Section 25 of the CMA prohibits any new investment in CPAs by the Government of Canada except in limited circumstances. Practically speaking, the only source of capital now available is debt, because of the inability to pledge federal

real property. Some CPAs may be able to borrow the capital for needed infrastructure, while others cannot for various reasons, including cash flow issues related to traffic volumes and specific financial obligations imposed on the CPAs by the CMA.

It seems clear to the Panel that the Government of Canada must ultimately take a proactive role in financial issues relating to CPA viability, and it must be prepared to facilitate investment by the private sector or invest directly as required to ensure the achievement of the vibrant, competitive marine transportation infrastructure contemplated by the CMA objectives.

Investment in CPAs by the Government of Canada

Recommendation 5.1

The Government of Canada should make investments in infrastructure for CPAs where the amount of capital needed is beyond the ability of the CPA to finance from its cash stream as currently provided for and where the business case for such investment has been approved by the appropriate government department.

While a CPA can borrow for its capital requirements, those needs may exceed its borrowing capacity, which is tied to an ability to service debt from its cash stream. The Panel is concerned that the inability of CPAs to finance needed infrastructure projects will ultimately frustrate the Government of Canada's objects and intentions as embodied in the CMA.

Access to Government Program Funding

Recommendation 5.2

Section 25 of the CMA should be clarified to ensure that CPAs are allowed to participate in any programs provided by the Government of Canada that are available to other Canadian companies.

Because section 25 of the CMA provides that no payment may be made by the Government of Canada to a CPA except in limited circumstances, CPAs cannot access federal funding programs available to other Canadian businesses. The Association of Canadian Port Authorities (ACPA) believes that access to such programs will facilitate the ability of CPAs to provide needed infrastructure improvements where such costs exceed borrowing capacity. ACPA has also stated that such programs will help redress imbalances in the availability of public funding for port infrastructure between the United States and Canada. These views have wide support from all stakeholders.

CPAs' Borrowing Limits

Recommendation 5.3

Application and approval processes to increase borrowing limits should be simplified and streamlined to ensure that CPAs can undertake projects in a timely manner.

Section 8(2)(1) of the CMA provides for limits to be placed in a CPA's Letters Patent restricting its borrowing capacity. All CPAs have the option of asking the Minister to increase their borrowing limits, and the Governor in Council can approve supplementary Letters Patent to increase a CPA's borrowing limit. To date, a number of CPAs have requested and received increases to their borrowing limits, but this process can be cumbersome and time consuming.

ACPA asserts that borrowing capacities determined by operating cash flow do not permit CPAs to undertake major infrastructure investments. With new terminal facilities potentially costing hundreds of millions of dollars, they claim that the CMA prevents a CPA from borrowing sufficient funds to be a major participant in project development. Debt for capital investment is obtained from private sector lenders, generally based on the CPA's projected stream of future revenues, since it cannot pledge federal real property as security for loans.

ACPA recommends that all the borrowing restrictions be removed from the CMA, and there was wide support among stakeholders (shippers, governments, port labour, etc.) for commercial lending institutions to determine borrowing limits. Nevertheless, borrowing restrictions in the Letters Patent serve the public interest in protecting the financial integrity of CPAs.

The Panel believes that CPAs should continue to use the current system and request increases in their borrowing limits, but the approval process should be streamlined to ensure that CPAs can undertake projects in a timely manner.

Financing Alternatives

Recommendation 5.4

The government should consider financing alternatives for new port infrastructure investments, such as the tax-exempt bonds used widely in the United States. Consideration should also be given to permitting accelerated capital cost allowance write-downs for infrastructure facilities provided by the private sector within a CPA.

In addition to direct funding and other assistance provided at the federal, state and municipal levels, U.S. ports benefit from special tax treatment for securities issued to lenders under certain conditions. Some U.S. ports can issue tax-exempt bonds, the effect of which is to greatly reduce the port's cost of borrowing. The Panel supports the creation of a 'tax-friendly' regime to facilitate CPAs' requirements for capital funding and investment in CPAs by the private sector. It also believes that a proactive Government of Canada could make other incentives and measures available to investors and the CPAs to accomplish this end.

Gross Revenue Charge

Recommendation 5.5

The stipend payable to the federal government should be calculated as a percentage of a CPA's net income.

Section 8(2)(h) of the CMA provides for a charge or stipend on the gross revenues of a CPA; this provides a return to the federal government for the use of its assets. The Letters Patent of each CPA set out the formula for calculating the annual charge on its gross revenues.

ACPA maintains that, in many instances, the gross revenue charge has the effect of draining the capital reserves of CPAs, which are necessary for reinvestment in port infrastructure to support an efficient and competitive port system. In certain instances, the stipend may place CPAs at financial risk, impairing the likelihood of their remaining financially self-sufficient. To maintain their Letters Patent in good standing, the CPAs must pay the stipend. Failure to do so would result in the CPAs' inability to meet any of their obligations.

Inequities are also created between the various CPAs, as some ports are landlord ports while others are operating ports. In the former case, private sector tenants bear the costs of operating terminal facilities, while revenues in operating ports are largely offset

by operating expenses. Consequently, operating ports pay a higher gross revenue charge relative to their available cash flow than landlord ports do. Thus ACPA argues that the gross revenue charge should be abolished; alternatively, the CMA should stipulate that it be used for future development of the national ports system.

Most ACPA member ports, as well as terminal operators, municipal and provincial governments, labour, and other stakeholders, share ACPA's view. Certain stakeholders, such as the Halifax and Montreal Port Authorities, appear to support the payment of an annual fee based on net income, believing it would be more in line with accepted commercial practice and the government's 'commercialization' concept.

While it is appropriate for the CPAs to pay a dividend to the Government of Canada for the use of its assets and to maintain their Letters Patent in good standing, the Panel believes that the dividend should be calculated on the basis of each CPA's net income and should not be seen as a revenue stream to offset the expenses of the marine transportation system.

Payments in Lieu of Taxes

Recommendation 5.6

Where the Government of Canada continues to own land within a CPA, it

should make payments in lieu of taxes on lands it owns.

Under Canada's constitutional law, Crown activities and Crown property are generally not taxable at either the provincial or the municipal level. This exemption from taxes applies to activities engaged in by the Crown directly or through its agents. Although the Government of Canada is exempt from taxation, since 1950 it has voluntarily assumed a responsibility to share equitably in the cost of local government with other property owners. The Government's contributions to the cost of local government in municipalities where it owns property are known as payments in lieu of taxes (PILT).

All CPAs, with the exception of the Montreal Port Authority, expressed general concerns about the requirement for PILT. They were particularly concerned about issues of financial viability (especially of the former Harbour Commission ports, which were not subject to PILT) and competitiveness with U.S. ports. For some CPAs, PILT represents a cost of nearly 25% of their gross revenues, and in certain cases the payments are greater than their net incomes. The CPAs point out that the federal government pays the PILT on waterways and facilities owned by the Crown and managed by the St. Lawrence Seaway Management Corporation (SLSMC). The CPAs believe the Government of Canada should pay PILT on federal lands managed by

the CPAs, bringing the policy in line with the treatment accorded the SLSMC.

Fees and Leases

Recommendation 5.7

The CMA should be clarified specifically to exclude lease payments from the definition of fees.

Under section 49 of the CMA, CPAs can fix fees for the use of a port, for goods moving within a port, or for any services provided by the CPA at the port. Section 50 of the CMA prohibits CPAs from discriminating among users, or classes of users, or from giving undue preference to any user or subjecting any user to an undue or unreasonable disadvantage. Recently, the Federal Court of Appeal determined that lease payments are not fees within the meaning of the CMA and that sections 49 and 50 of the CMA do not apply to lease payments.

For the sake of clarity and certainty, ACPA would like to see the definition of fees amended explicitly to exclude lease and rental payments. They argue that if section 50 of the CMA covered every lease agreement, licence, etc., it would result in repeated legal challenges and cause administrative chaos for CPAs, extraordinary costs and diminished net income, as every agreement reached might be reopened for negotiation. CPAs view leases as freely negotiated commercial contracts

between two parties for the use of port lands. They feel those agreements should not be subject to administrative review, as they are confidential and market-sensitive transactions.

Terminal operators and shippers, on the other hand, favour the CMA being amended to confirm that lease payments charged to port tenants are subject to the definition of fees as outlined in the CMA. They favour the establishment of a system to resolve disputes arising between port users and CPAs, with recourse to arbitration or review by the Canadian Transportation Agency if required.

The Panel supports the Federal Court of Appeal's interpretation of the CMA and believes it would be inappropriate to legislate the review of such contracts pursuant to economic changes.

Federal Real Property

Purchase, Disposal and Exchange

Recommendation 5.8

All real property determined by the CPAs to be surplus to the port activities described in section 28(2) of the CMA should be transferred at nominal value from Schedule B to Schedule C of the Letters Patent of each CPA.

Recommendation 5.9

Application and approval processes for purchase, disposal and exchange of federal real property should be simplified and streamlined to ensure that CPAs can proceed with such transactions in a timely manner.

Recommendation 5.10

Section 46(1)(b)(i) of the CMA should be amended to allow CPAs to exchange federal real property for non-federal real property of comparable or greater market value.

The approval process for acquisition, disposal and exchange of federal real property managed by CPAs is so complex and time consuming that they are extremely reluctant to consider such transactions. This problem is compounded by the fact that CPAs cannot retain sale proceeds, so there is little or no incentive to consider such sales; instead they often resort to leasing surplus properties, which may not always be the best business solution.

Section 44(6) of the CMA says a CPA may manage, occupy or hold only the real property set out in its Letters Patent. Schedule B of a CPA's Letters Patent lists the lands that are federal real property, while Schedule C lists lands other than

federal real property. In fact, when the Government of Canada created the CPAs, most real property ended up in Schedule B.

To comply with section 44, all transactions concerning federal real property are subject to the issuance of supplementary Letters Patent, which must be approved by the Minister. The requirements and approval process for each land transaction depend on whether it is an acquisition, a sale or an exchange. The complexity of the approval process and provisions of other legislation and regulations prevent CPAs from completing such transactions in a timely manner. Consequently the Government of Canada should amend the CMA to expedite real property transactions.

Proceeds of Sales

Recommendation 5.11

All proceeds received by a CPA from the disposal of any federal real property managed by the CPA should be placed in a trust or segregated fund for future infrastructure investments by that CPA.

Before the CMA came into effect, port administrations retained the proceeds from the sale of port lands under certain conditions. At present, CPAs are not inclined to dispose of surplus property or finalize transactions that have been in process for

years, because of the time and money it would take to complete the transactions and because they cannot retain the proceeds of sale or claim reimbursement of the costs of processing the sale from the Government of Canada.

When government departments sell federal real property that they administer, the proceeds go into the Consolidated Revenue Fund. There is a mechanism for them to seek a return of some or all the proceeds from the Treasury Board, but there is no comparable mechanism for CPAs.

ACPA has requested that section 46 of the CMA be revised to allow a CPA to retain the proceeds from sales of federal real property for the purpose of port development. ACPA feels that giving CPAs the ability to retain the proceeds for reinvestment would enable them to develop their operations and economic infrastructure in accordance with their management responsibility. It would also promote the development of an effective and competitive national ports system, in keeping with the National Marine Policy.

Numerous stakeholders supported the ports being able to retain the proceeds from the sale of federal real property; they stipulated, however, that these funds should be used for infrastructure development and not simply to offset operating costs.

Environment

Liability

Recommendation 5.12

Neither CPAs nor their directors or officers should be liable for environmental conditions that pre-date the creation of CPAs. The Government of Canada should indemnify CPAs and their directors and officers for claims arising from pre-existing environmental issues.

Under section 62 of the CMA, the Government of Canada has adopted the *Port Authorities Operations Regulations*. These regulations prohibit any act or omission in the port that has or is likely to have specified results, including "jeopardize the safety or health of persons in the port", "cause a nuisance", "cause damage to property", and "adversely affect soil, air or water quality", unless otherwise authorized. Other environmental legislation that affects CPAs includes the *Fisheries Act*, the *Oceans Act* and the *Canadian Environmental Protection Act*.

CPA boards of directors have fiduciary and legal responsibilities and obligations similar to those of a private sector corporation under section 22(1) of the CMA. In discharging their duties to the CPA, directors are responsible for ensuring that the proper authorizations and/or prohibitions are

enforced with regard to activities occurring on the land or in the navigable waters of the port.

A number of CPA boards have obtained legal advice and expressed concern that, under the current legislation and enforcement regime, they and the CPA itself may be held liable for the discharge of effluent into a harbour, or for other potential port-related liabilities. CPAs want amendments to the CMA to provide that neither CPAs nor their directors and officers are liable for environmental issues that existed before the CPAs were created. Where the Government of Canada participated or acquiesced in the creation of environmental hazards, it is unreasonable and counterproductive for CPAs and their directors or officers to be exposed to liability for the consequences of such action.

Environmental Information

Recommendation 5.13

The Government of Canada should be responsible for the cost of identifying, monitoring and reporting environmental risks existing at the time it created the CPAs.

Recommendation 5.14

CPAs should be responsible for the cost of maintaining current information on environmental risks arising after creation of the CPAs.

Under the Treasury Board Real Property Environment Policy, Transport Canada has an obligation to ensure that information is maintained on environmental risks associated with properties in its portfolio. A CPA has authority to enter into easements or licences for utilities or services over federal real property managed by the CPA. Currently, there is no requirement for CPAs to maintain information on environmental risks with respect to federal real property that they manage.

Transport Canada proposes that the CMA be amended to require CPAs to maintain information on environmental risks on federal real property.

On the other hand, ACPA claims that CPAs have been unable to provide Transport Canada with an inventory of third-party discharges on Crown lands as a result of the large number of pipes owned by both governmental and private organizations discharging untreated effluent into harbours and a lack of information about their existence. If CPAs and their directors and officers are potentially liable for environmental damage, then they have no motivation to compile such information. If the Government of Canada caused or acquiesced in the creation of environmental risk before establishment of the CPAs, then the Government should bear the expense of compiling and maintaining this information.

CPAs should bear the expense of maintaining information about environmental risks arising after CPAs assumed responsibility for management of real property.

Merger of CPAs

Recommendation 5.15

The CMA should be amended to permit mergers of CPAs where the resulting entity meets the objectives of the National Marine Policy and of section 8(1) of the CMA. Any such process should ensure that all affected stakeholders have input into the final decision to integrate or merge CPAs.

ACPA recommended amending the CMA to permit CPAs to merge in the future should there be a strong and practical business case for such an alliance. The Vancouver Port Authority suggested that the CMA provide for mergers or other forms of integrated operations by CPAs (for example, strategic planning) to enable them to respond better to competition, particularly from U.S. ports.

Notwithstanding the ACPA recommendation, the Fraser River Port Authority and its stakeholders expressed concern about a suggestion to merge the lower B.C. mainland ports, indicating their satisfaction with the current port structure. Furthermore, terminal operators and port users were generally concerned that such mergers might eliminate

competitive choices for shippers and indicated that public consultations should be part of any merger process.

Governance

Recommendation 5.16

The Minister should nominate individuals from the list of nominees recommended by the user nominating committee to sit as CPA board directors. In the event that the committee proposes an insufficient number of nominees, the Minister may nominate any other qualified individuals.

Recommendation 5.17

The CMA should be amended to permit a person who is a director, officer or employee of a user to sit on a CPA board of directors.

The Panel wished to address user concerns about having the best-qualified candidates appointed to the board of directors to represent their interests. The number of directors on a CPA board is set out in its Letters Patent (ranging from seven to eleven). With the exception of Vancouver (nine), the present number of directors on each CPA board is seven.

Section 14(1) of the CMA specifies that the Governor in Council appoints one individual

nominated by the Minister; the municipalities mentioned in the Letters Patent appoint one individual; the province or provinces mentioned in the Letters Patent appoint one or two individuals; and the Governor in Council appoints the remaining individuals nominated by the Minister in consultation with users selected by the Minister or the classes of users mentioned in the Letters Patent. Certain individuals cannot be directors, including elected officials, non-residents, and directors, officers or employees of port users.

ACPA supports the existing criteria for CPA board composition. Ship owner interests and many shippers, however, supported having the majority of appointments made directly by CPA users. Many stakeholders also favoured allowing users to sit on CPA boards, as permitted in the case of the St. Lawrence Seaway Management Corporation.

The Panel can see no reason why director candidates for CPA boards should not include suitably qualified representatives of users. There are many advantages to having experienced and knowledgeable individuals on a board, especially in the case of smaller ports where the candidate pool may not be large. The CPAs' Letters Patent contain conflict of interest guidelines that should be sufficient to offset concerns in that area.

Chapter 6

Recommendations Concerning the St. Lawrence Seaway

The future of the St. Lawrence Seaway is of concern to stakeholders and the Panel.

Commercialization of the management and operation of the Canadian segment of the Seaway, under the CMA in 1998, has been a resounding success according to the vast majority of presentations the Panel received. A private sector culture has been instilled in the organization's management and workforce, resulting in greater efficiencies. The St. Lawrence Seaway Management Corporation (SLSMC) has bettered its five-year business plan for cost efficiencies and manpower reductions. Toll increases have been

Commercialization of the management and operation of the Canadian segment of the Seaway, under the CMA in 1998, has been a resounding success according to the vast majority of presentations the Panel received.

maintained below projected levels. Capital and asset renewal costs have been contained within the five-year business plan limit of \$125 million. The Government of Canada has not been required to provide any funding for operation of the Seaway during the first five years of commercialization.

Governance of the organization has worked well according to system users

and management. Members of the board of directors offer the SLSMC a broad range of business experience, particularly in the marine industry. Other segments of the industry see the governance model as a very successful example.

Location of Head Office

Recommendation 6.1

Section 97(2) of the CMA should be amended to allow the board of directors of the St. Lawrence Seaway Management Corporation to locate the head office of the organization wherever the board deems most appropriate from a business and operational perspective.

It has been suggested that the current requirement for the SLSMC head office to be located at Cornwall, Ontario, restricts the ability of management to operate in the most efficient and cost-effective manner. The Panel agrees, and sees no commercial or practical justification for this.

Enforcement

Recommendation 6.2

Part 4 of the CMA should be re-examined to ensure that it contains more economically viable and efficient provisions for detention, guarantees and release of ships accused of offences under the CMA.

Part 4 of the CMA deals with enforcement of Seaway regulations and provides for traditional maritime remedies such as vessel and cargo seizures through the courts. These

practices can be very expensive for vessel owners, as well as the SLSMC, and may involve lengthy delays for the vessels as claims are processed through the court system. This type of enforcement regime may be appropriate for cases of major breaches of conduct and/or gross negligence involving hard-to-identify owners, but in most cases of minor infractions it appears the system is unnecessarily cumbersome. Most users of the Seaway believe a more cost-effective administrative process could be put in place to enforce procedures more expeditiously.

The SLSMC has established an Internal Review Committee for processing many such violations that occur each year under the regulations. Fines for violations are usually minor, and most violations relate to either excessive speed or excessive draft. Memorandums of Understanding regarding these issues have been signed with the Canadian Shipowners Association and the Shipping Federation of Canada. The procedure has worked well for the past four years but cannot deal with users who are not members of those organizations. Accordingly, the enforcement provisions in Part 4 of the CMA should be re-examined.

Notice of Meetings

Recommendation 6.3

Section 83(2) of the CMA should be amended to read as follows:

The not-for-profit corporation shall, at least thirty days before a meeting, have notice of the meeting published *on the corporation's web site or in a*

major newspaper published or distributed in each city mentioned in the agreement, setting out the time and location of the meeting and specifying that the financial statements relating to the operation of the Seaway are available to the public at its principal place of business. *(amendment emphasized)*

Chapter 7

Recommendations Concerning Public Ports

Recommendation 7.1

The Government of Canada should ensure that the Port Divestiture Fund enables the process of transferring public ports to provincial governments, municipal authorities, community organizations or private interests to continue.

Many public ports serve domestic and international shipping and play an important role on a regional, provincial and even national level.

Recommendation 7.3

A CPA should not take over or amalgamate with a public port without:

- consultation with relevant provincial and municipal governments and users; and
- maintaining the level of productivity, flexibility and operating costs afforded by the public port concerned.

Recommendation 7.2

The Government of Canada should cooperate with and encourage provincial governments to take over public ports that the provinces consider important to local industries and therefore to the local, provincial and national economy.

In 2000, Canadian ports other than CPAs handled 44% of the country's total marine transportation traffic by tonnage.¹ Many public ports serve domestic and international shipping and play an important role on a regional, provincial and even national level. For public ports

¹ Includes Fisheries and Oceans Canada, provincial and municipal governments and private facilities as well as ports remaining under Transport Canada (*Transportation in Canada 2001 – Annual Report*, p. 79).

to continue to support local, provincial and national interests effectively, the Government of Canada should lead development of a policy to ensure efficient use of public ports. The CMA fails to address their contribution to the economy. The Government has not yet divested a number of public ports, and it has generally put their maintenance in abeyance.

The 1995 National Marine Policy outlined the Government's policy on public ports. Certain public ports would be transferred to provincial governments, municipal authorities, community organizations, private interests and other groups, facilitated by a \$125 million federal Port Divestiture Fund. The expectation was that provincial and local interests would manage divested public ports, providing better service at lower cost and focusing on local needs. The Government extended the divestiture program, originally anticipated to be completed by the end of March 2002, to the end of March 2003, at which time Transport Canada would review the progress of the program and its options regarding any ports that had not been divested. The Port Divestiture Fund was subsequently increased to \$170 million. As of March 31, 2003, 446 of the 549 ports had been transferred, demolished or had their public harbour status terminated. Of the

remaining 103 ports, 71 are regional/local ports and 32 are remote ports.

In response to the Government of Canada's divestiture program, the government of Quebec has begun to focus on the importance of ports generally and in particular the public ports and their impact on the provincial economy. The intention is to ensure that public ports and CPAs work together in the best interests of all stakeholders. A forum comprising representatives from the Government of Quebec and the marine transportation industry has been established to ensure cohesive and effective use of many public ports and CPAs considered important to Quebec's economy. The Government of Quebec's plan was created in response to the objectives of the CMA and to ensure that the public ports affected will be properly maintained and supported. The ultimate goal is that they continue to contribute to the fabric and well-being of the industries and municipalities that rely upon them and provide safe, efficient access to domestic and international marine transportation.

To achieve the objectives of the CMA, it is essential that the Port Divestiture Fund continue to be maintained and that the Government of Canada favour the establishment of a policy by or with the

provincial governments that have shown an interest in the organization and operation of public ports located within their boundaries.

Recommendation 7.4

The Government of Canada should continue to maintain the infrastructure of public ports, including the physical plant, dredging and navigation aids, until they are actually transferred.

It was brought to the attention of the Panel that there is a lack of maintenance of the public ports awaiting divestiture. Furthermore, many provinces and users are concerned about the absence of a policy providing for continuation and

enhancement of the public ports' role as economic generators.

Recommendation 7.5

The Government of Canada should continue to exercise its full jurisdiction over environmental, navigation, traffic and safety issues in all public ports, including those that have been divested.

The Canadian Marine Pilots Association (Atlantic) says that divested public ports are relying on private companies to conduct soundings. Potential safety issues arise when public ports fail to forward the results of these soundings to update navigation charts. Imperial Oil raised similar issues.

Chapter 8

Recommendations Concerning Pilotage

Part 7 of the CMA concerns only consequential amendments to the *Pilotage Act* and accordingly limits the Panel's mandate to consideration of pilotage-related issues introduced by the CMA. The Panel makes additional comments about pilotage in the Observations section of the report (*see Chapter 10*).

Part 7 of the CMA concerns only consequential amendments to the *Pilotage Act* and accordingly limits the Panel's mandate to consideration of pilotage-related issues introduced by the CMA.

Stakeholders made representations to the Panel concerning the final offer regime introduced by section 15.2 of the *Pilotage Act*, which reads as follows:

15.2(1) The parties to the contract shall each submit a final offer in respect of the outstanding issues to each other and to the arbitrator within five days

after the date on which those issues are referred to the arbitrator.

- (2) Within fifteen days, the arbitrator shall choose one or other of the final offers in its entirety.

Arbitration

Recommendation 8.1

The *Pilotage Act* should be amended to include a provision similar to section 164(1) of the *Canada Transportation Act* concerning an arbitrator's request for additional information.

- (3) The final offer chosen by the arbitrator is final and binding and becomes part of the new contract for services that is effective on the day after the former contract expires.
- (4) The parties to the contract shall share equally the cost of the fees of the mediator or arbitrator.

Many stakeholders expressed concern that the current requirements for financial self-sufficiency and a fair and reasonable approach to pricing of pilotage services are irreconcilable. In particular, the absence of transparency of information and lack of a definition of self-sufficiency virtually enshrines the application of perpetual and potentially unwarranted tariff increases. Stakeholders suggested amending section 15.2 of the *Pilotage Act* to allow an arbitrator to request any additional information from the parties considered pertinent to the final arbitration process. The *Canada Transportation Act* provides a detailed arbitration mechanism, and section 164(1) of that statute gives an arbitrator broad powers to request

additional information except where the parties agree to exclude or limit such information.

Composition of Pilotage Authority Boards of Directors

Recommendation 8.2

The selection process for board members for Pilotage Authorities should be formalized to recognize the current practice of selecting directors on the basis of two members each from the transportation industry, pilots and the public, together with the application of a "knowledge and experience" clause modeled on sections 15(1) and (2) of the CMA with respect to CPAs.

Citing concerns about fairness and balance, some stakeholders, particularly representatives of user groups, believe that the definition, composition and responsibilities of Pilotage Authorities' boards of directors should be clarified. They also believe that additional direct representation by users would ensure a more commercial approach to decision making and provide more hands-on knowledge of the marine industry.

Chapter 9

Recommendations Concerning Ferries

Recommendation 9.1

Where ferry terminal facilities owned by the Government of Canada are to be divested or leased or where leases are to be renewed, such facilities should be divested or leased to local CPAs or similar bodies to ensure equal and fair access for all bona fide ferry operators, with the intention that no one ferry operator would enjoy an unfair monopoly.

The CMA contains provisions concerning the future status of ferry services under the purview of Marine Atlantic Inc. The CMA

The CMA contains provisions concerning the future status of ferry services under the purview of Marine Atlantic Inc.

provides for the continuance of constitutional services and the provision of "similar services" on other routes. The principal vehicle for services was to be the private sector, supported financially by the

Government of Canada if required, as well as provincial governments or other interested and qualified parties. In general this process was seen to be working, and stakeholders encourage continuation of the policy.

A contentious area has to do with ferry 'sites', or the ports and terminal facilities used by ferry services.

Advocates for transferring these facilities to ferry operators cite the need for substantial capital investments to maintain and renew the services. Opponents are concerned about the creation of ferry service monopolies exercised through control of terminal facilities. It is the Panel's view that to encourage

innovation and competition in ferry services, the Government of Canada should ensure equal and fair access to ferry ports and terminal facilities for existing and potential operators as an essential component of the commercialization policies embodied in the CMA.

Chapter 10

Observations

Stakeholders made many substantive and well documented representations to the Panel that did not fall strictly within the sections of the CMA dealing with CPAs, the Seaway, public ports, pilotage and ferries. The Panel considers these representations to be of great importance to the objectives of the National Marine Policy and the CMA and respectfully suggests that the Government of Canada give serious consideration to the observations that follow.

The Panel considers these representations to be of great importance to the objectives of the National Marine Policy and the CMA and respectfully suggests that the Government of Canada give serious consideration to the observations that follow.

National Transportation Policy

Observation 1

There is a requirement for a clear commitment by the Government of Canada to promote and more fully recognize and integrate the marine transportation industry into the *Canada Transportation Act*.

The Panel agrees with stakeholder representations emphasizing how vital it is for the Government of Canada to recognize that:

- Marine transportation is a strategic economic and environmental tool for Canada.
- Only the Government of Canada can assume the essential leadership role needed to encourage and facilitate cooperation between marine transportation stakeholders (including provincial and municipal governments). To build effectively on the foundation created by the National Marine Policy and the *Canada Marine Act*, such cooperation should include the federal departments responsible for industry and international trade.
- The marine transportation industry and associated infrastructure are integral to Canada's economy and critical contributors to the lives of all Canadians. To maintain and improve our standard of living and quality of life, investments in marine transportation must be planned and undertaken accordingly.
- The Government of Canada and the marine transportation industry working closely together have the ability to implement the National Marine Policy and take into account the interdependence of the marine transportation and industrial

production sectors. A prerequisite is for the Government of Canada to recognize the national strategic need for marine transportation in respect of port infrastructure, the Seaway, dredging and other services and to invest accordingly.

Observation 2

There is a need for the Government of Canada to develop a progressive environment that encourages both private and public sector investment promoting innovative financing solutions.

Policy makers from all areas of government, in concert with industry leaders, should work toward the removal of institutional barriers that stifle or seriously delay the development of investment incentives and solutions.

The St. Lawrence Seaway

Observation 3

The future of the Seaway requires the leadership of the Government of Canada and the commitment of all stakeholders, including the provinces, to determine whether the Seaway should continue to be a necessary part of our nation's future transportation network.

The Seaway has been in operation for almost 50 years; over that period, domestic and foreign vessels have carried billions of tons of cargo through the Seaway and into the industrial heartland of North America. Entire industries, ports and communities have come to rely on the Seaway for marine transportation services and their livelihoods.

In the past decade many developments have affected the business of the Seaway, including the following:

- Changes in the pattern of shipments within the Seaway, the Great Lakes and North America's heartland. The Canadian wheat trade has experienced a major shift in sales from Russia and Europe to Asia, with the majority of wheat exports now being shipped through west coast ports to the detriment of the Seaway. The Canadian steel industry now uses less coal and iron ore than in the past because of changes in technology, such as re-melt facilities and the use of scrap steel as a source of raw materials, resulting in a further decrease in Seaway traffic.
- While containerized cargo is the fastest-growing sector of international trade, the Seaway is not a beneficiary. At present virtually

all containerized traffic moves in and out of North America's heartland by road or rail. Some traditional bulk cargoes, including grain, lumber, agricultural goods, and pulp and paper, are now transformed into value-added products suited for containerized transport.

- The Seaway is being used at only 50% of capacity, and there are no signs of a future increase in traffic without major policy changes. Some aspects of the government's user pay principle have increased the overall cost of operating vessels in Canada as compared to other modes of transportation. Reduced traffic leads to increased costs, and higher costs cause further migration of cargoes to U.S. ports or other modes of transportation. Seaway tolls, Coast Guard fees and ice breaking fees are a few examples contributing to increased costs.
- During the first five-year business plan of the newly created SLSMC, asset renewal costs were approximately \$125 million, including all maintenance and capital expenditures required to maintain operation of the Seaway. Authorized asset renewal costs for the period 2003-04 to 2007-08 are

\$170 million, an increase of 36% over the first five-year business plan. SLSMC estimates that asset renewal costs for the period from 2008-13 will be approximately \$330 million.

- Over the past 20 years shipping companies in the international marketplace have increased the size of their vessels to gain economies of scale for their customers. As a result, fewer vessels can transit the Seaway, owing to beam and draft restrictions.

The Seaway is at a crossroads. To be effective, government initiatives with respect to the Seaway should involve stakeholders, including provincial and municipal governments, and intermodal partners. The SLSMC and the stakeholders should continue to explore new and creative methods of using the Seaway.

The United States Army Corps of Engineers proposed a long-term study to determine the future use of the Seaway. Although the scope of this study has been reduced considerably, it still raises a question about whether the Government of Canada should participate on a bilateral basis, as was suggested by many stakeholders. The Panel is of the view that before any such study is endorsed, it must first be recognized that the Seaway and marine transportation

in general are essential elements of the present and future of our national transportation policy.

The Environment

Observation 4

Increased use of marine transportation and its integration into the multimodal system is an ideal way to help achieve Canada's commitment to the Kyoto Protocol for reduction of greenhouse gases.

Major road systems in Canada are becoming increasingly congested, and the resulting pollution is detrimental to the environment and human health. In addition, the cost of expanding and improving road and highway systems is formidable, and to some extent that cost could be alleviated through greater reliance on marine transportation. Revitalization of transportation by canals in Europe and increased movement of goods by water along the U.S. east coast are examples of initiatives to relieve road traffic and take advantage of the environmental benefits of marine transportation (*Table 2*).

Table 2
Environmental Benefits of Marine Transport

Index	Water	Rail	Road
Energy use	1	2.2	9.7
Atmospheric Emissions	1	1.4	7.6
Accidents	1	13.7	74.7
Spills	1	10.0	37.5
Noise	1	1.4	1.3

Source: Sodes and Saint-Laurent, Vision 2000. Comparative Study of the Environmental Impacts of Modes of Freight Transport in the St. Lawrence Axis, Appendix 1 (2001).

Marine Services Fees

Observation 5

The Panel agrees with the submission of the Regional Marine Advisory Boards and the National Marine and Industrial Coalition regarding the elimination of Canadian Coast Guard – Marine Services Fees.

Observation 6

The Government of Canada should continue to be responsible and pay for dredging in waters up to the boundaries of CPAs and public ports.

The level of activity in Canadian ports, on Canadian marine routes and through the Seaway depends on the level of marine transportation and will necessarily decrease if the costs of using those facilities increase. The entire Canadian marine transportation community suggested to the Panel that it should

support the August 26, 2002, submission by the Regional Marine Advisory Boards and the National Marine and Industrial Coalition on Canadian Coast Guard – Marine Services Fees. Although the Marine Services Fees are imposed under the *Oceans Act*, the Panel is of the opinion that this question also falls within the ambit of section 4(a) of the CMA. The Panel supports the Canadian marine transportation community regarding abolition of Marine Services Fees.

Public Awareness of Marine Transportation

Observation 7

There is a need for the Government of Canada and other stakeholders to raise the level of public awareness of the important role played by marine infrastructure and the marine transportation industry in our national economy.

All across Canada, stakeholders emphasized that marine transportation activities and their importance to the Canadian economy are virtually unknown to the public. The marine transportation industry is a vital contributor to the national, provincial and municipal economies from coast to coast. The Government of Canada should help raise the profile and acquaint the public with the significance of the marine transportation industry (for example, a National Marine Day).

Intergovernmental Cooperation

Observation 8

Intergovernmental cooperation to foster the growth of our marine transportation industry requires the leadership and encouragement of the Government of Canada.

All levels of government should encourage development of Canada's marine transportation industry to foster and secure growth of our economy at the national, provincial and municipal levels. The Government of Quebec has made significant efforts to coordinate delivery of marine transportation services in that province. The Government of Canada should assume a leadership role to encourage and improve cooperation between all levels of

government. For example, stakeholders expressed concern about complicated and overlapping tax regimes applicable to the marine transportation industry and urged the development of a consistent scheme of property taxation.

Security

Observation 9

It is appropriate for the Government of Canada, rather than the marine transportation industry, to bear the expense of implementing national security measures.

The International Maritime Organization has an ongoing process to develop security guidelines for the marine transportation industry. Stakeholders and the Panel endorse the early adoption of standardized security measures to safeguard Canada's marine transportation infrastructure in accordance with international practice; however all such additional security measures or enhancements imposed for the benefit of Canadians and the public interest after the terrorist attacks of September 11, 2001, should be paid for by the Government of Canada. For example, the U.S. federal government provides significant funding for seaport security in the form of direct grants to ports.

Pilotage

Observation 10

The Minister of Transport has endorsed 21 recommendations arising from a review of major pilotage issues completed in September 1999. It is now up to the Government of Canada to ensure expeditious implementation of the outstanding recommendations in the interests of a more competitive marine transportation industry, helping to fulfil the goals of the CMA and the National Transportation Policy.

Section 157 of the CMA (amending section 53(1) of the *Pilotage Act*) mandated a review of outstanding pilotage issues, including compulsory pilotage area designation, the licensing and certification process, vessel exemptions, training, financial self-sufficiency and cost reduction. In conducting that review, the Minister was assisted by the Canadian Transportation Agency, which held hearings through 1998 and 1999 and released a report with 21 recommendations in September 1999. The Minister endorsed the recommendations and directed that they be implemented, and most of them have been.

Some important recommendations have not yet been acted on, however. The Panel

received representations from domestic fleet owners addressing in particular the issues of exemptions for qualified masters and the pilotage certification regime in the Laurentian Pilotage Authority (LPA) and Great Lakes Pilotage Authority (GLPA) regions. Other representations called for yet another pilotage review. Evidently, key issues such as the following remain outstanding:

- The scope of application of the Pilotage Risk Management Methodology.
- The process for developing a system to assess masters', officers' and pilots' competence and quality of services.
- The GLPA enhancement of requirements to exempt vessels from compulsory pilotage.

Members of the Panel reflect differing perspectives on the matter of stakeholders' positions on the exemption of vessels from compulsory pilotage and the pilotage certification regime in the LPA and GLPA regions. The Panel is especially concerned about the relationship between domestic ship owners and LPA pilots, which is often characterized by misunderstanding and mistrust. These tensions are highly detrimental to initiatives for urgently needed modernization and improvements

to the efficiency of the pilotage system. More than ever, it is essential for all parties to contribute in a positive way to the competitiveness of the St. Lawrence River, Seaway and Great Lakes system while at all times continuing to maintain navigational safety.

The Panel would like to be in a position to make recommendations concerning these matters; however, it is now up to the Government of Canada to ensure that the pilotage authorities implement the outstanding recommendations endorsed by the Minister.

Appendix A

Submissions and Stakeholder Consultations

The following authorities, agencies, organizations and individuals submitted written briefs to the Panel and/or participated in the Panel's consultation with stakeholders. Copies of the submissions on CD-ROM are available on request through Transport Canada's web site.

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- Association of Canadian Port Authorities
 - Atlantic Marine Pilots
 - Atlantic Pilotage Authority
 - Bay Ferries Limited
 - B.C. Marine Pilots
 - B.C. Wharf Operators Association
 - Belledune Port Authority
 - Business Council of British Columbia
 - Canaan Shipping Company Ltd. and Modern Terminal Ltd.
 - Canada Place Corporation
 - Canadian Chamber of Commerce
 - Canadian Chemical Producers Association
 - Canadian Environmental Assessment Agency
 - Canadian Fertilizer Institute
 - Canadian Hay Association
 - Canadian Manufacturers & Exporters – British Columbia Division
 - Canadian Marine Pilots Association/Canadian Merchant Service Guild
 - Canadian Pacific Railway
 - Canadian Shipowners Association
 - Canadian Transportation Agency
 - Canadian Wheat Board
 - Chamber of Maritime Commerce
 - Chamber of Shipping of British Columbia
 - City of Burnaby
 - City of Nanaimo
 - City of North Vancouver
 - City of Port Alberni
 - City of Port Moody
 - City of Richmond
 - City of Sorel-Tracy
 - City of Vancouver – Engineering Services
 - City of Vancouver – City Manager's Office
 - Coal Association of Canada
 - Columbia Containers Ltd.
 - Competition Bureau – Industry Canada
 - Corporation des pilotes du Bas Saint-Laurent
 - Corporation des pilotes du Saint-Laurent central
 - Corporation of Delta
 - Council of Forest Industries
 - Council of Marine Carriers
 - Council of Tourism Associations of B.C.
 - District of North Vancouver
 - District of West Vancouver
 - Federation of Canadian Municipalities
 - Foerster, Martin & Dorothee and Ron & Deborah Simmons
 - Fording Inc.
 - Forest Products Association of Canada
 - Fraser River Port Authority
 - Global Forage Alliance
 - Gorthon Lines
 - Government of Newfoundland and Labrador
 - Grant's Landing Marina
 - Great Lakes Marine Pilots
 - Great Lakes Pilotage Authority
 - Greater Vancouver Gateway Council
 - Greater Vancouver Regional District
 - Greater Vancouver Transportation Authority
 - Halifax Port Authority
 - Halifax Regional Municipality
 - Halifax Shipping Association
 - Hamilton Port Authority
 - Hodgson, J.R.F. – Visiting Professor, Dalhousie University

appendix A | SUBMISSIONS AND STAKEHOLDER CONSULTATIONS

- Imperial Oil
- Inglis, Tom E.
- ILWU Canada – International Longshore & Warehouse Union of Canada
- ILWU Ship and Dock Foremen – Local 514
- International Longshoremen’s Association – Halifax Locals 269, 1341, and 1825
- Ircha, Professor Michael C. – The Transportation Group, University of New Brunswick
- J.D. Irving, Limited
- Jonathan Seymour & Associates Inc.
- Laurentian Pilotage Authority
- Limoges, Gail
- Logistec Corporation
- Martin, Jim
- Metropolitan Halifax Chamber of Commerce
- Montreal Port Authority
- Montreal Shipping Inc. (Montship Inc.)
- Nanaimo Port Authority
- New Brunswick Department of Transportation
- New Brunswick Mining Association
- Noranda Inc./Falconbridge Limited
- North West Cruise Ship Association
- Nova Scotia Department of Transportation & Public Works
- Nunavut – Department of Community Government and Transportation
- Océanex (1997) Inc.
- Ontario Ministry of Transportation
- Pacific Pilotage Authority
- Port Alberni Port Authority
- Prince Rupert Grain Ltd.
- Prince Rupert Port Authority
- Quebec Department of Transport
- Quebec Port Authority
- Railway Association of Canada
- Red River Basin Commission
- Ridley Terminals Inc.
- Rigel Shipping Canada
- Saint John Port Authority
- St. Lawrence Economic Development Council
- St. Lawrence Seaway Management Corporation
- St. Lawrence Shipoperators Association
- Saskatchewan Pulse Growers
- Scotia Prince Cruises
- Shelton, Chris
- Shipping Federation of Canada
- Slade, George
- Southern Railway of British Columbia Limited
- TSI Terminal System Inc.
- Thunder Bay Port Authority
- Toronto Harbourfront Community Association
- Toronto Port Authority
- Trois-Rivières Port Authority
- Upper Lakes Group Inc.
- Vancouver Board of Trade
- Vancouver Port Authority
- Village of Belcarra
- WESTAC – Western Transportation Advisory Council
- Western Canadian Shippers’ Coalition
- Western Grain Elevator Association
- Western Marine Community
- Western Provinces of British Columbia, Alberta, Saskatchewan and Manitoba
- Western Stevedoring Company Limited
- Westshore Terminals Ltd.
- Weyerhaeuser Company Limited
- Whaley, Steven Randall (Recreational Boating)
- Windsor Port Authority
- Wreck Beach Preservation Society
- Yarmouth Area Industrial Commission (Port of Yarmouth)

The Panel travelled across Canada and met with stakeholders in the marine transportation industry in the following cities:

September 17, 2002.....	St. John’s
September 18-19.....	Halifax
September 20	Saint John
September 25	Montreal
September 26	Quebec City
October 7.....	Montreal
October 8-9.....	Toronto
October 10	Thunder Bay
October 11	Winnipeg
October 21-24	Vancouver
October 25	Prince Rupert
November 12-15.....	Ottawa



Appendix B

List of Recommendations

chapter 4 | GENERAL RECOMMENDATIONS

Recommendation 4.1

Based on the overwhelming majority of stakeholder submissions, the Panel endorses the addition of a preamble to the *Canada Marine Act* that explicitly sets out the historical and present-day significance of marine transportation to our national heritage, sovereignty and economy.

Recommendation 4.2

Because conditions in the industry are changing so rapidly, section 144 of the CMA should be amended to provide for a review of the legislation every five years.

chapter 5 | RECOMMENDATIONS CONCERNING THE CANADA PORT AUTHORITIES

Investment in CPAs by the Government of Canada

Recommendation 5.1

The Government of Canada should make investments in infrastructure for CPAs where the amount of capital needed is beyond the ability of the CPA to finance from its cash stream as currently provided for and where the business case for such investment has been approved by the appropriate government department.

Access to Government Program Funding

Recommendation 5.2

Section 25 of the CMA should be clarified to ensure that CPAs are allowed to participate in any programs provided by the Government of Canada that are available to other Canadian companies.

CPAs' Borrowing Limits

Recommendation 5.3

Application and approval processes to increase borrowing limits should be simplified and streamlined to ensure that CPAs can undertake projects in a timely manner.

Financing Alternatives

Recommendation 5.4

The government should consider financing alternatives for new port infrastructure investments, such as the tax-exempt bonds used widely in the United States. Consideration should also be given to permitting accelerated capital cost allowance write-downs for infrastructure facilities provided by the private sector within a CPA.

Gross Revenue Charge

Recommendation 5.5

The stipend payable to the federal government should be calculated as a percentage of a CPA's net income.

Payments in Lieu of Taxes

Recommendation 5.6

Where the Government of Canada continues to own land within a CPA, it should make payments in lieu of taxes on lands it owns.

Fees and Leases

Recommendation 5.7

The CMA should be clarified specifically to exclude lease payments from the definition of fees.

Purchase, Disposal and Exchange of Federal Real Property

Recommendation 5.8

All real property determined by the CPAs to be surplus to the port activities described in section 28(2)(a) (b) of the CMA should be transferred at nominal value from Schedule B to Schedule C of the Letters Patent of each CPA.

Recommendation 5.9

Application and approval processes for purchase, disposal and exchange of federal real property should be simplified and streamlined to ensure that CPAs can proceed with such transactions in a timely manner.

Recommendation 5.10

Section 46(1)(b)(i) of the CMA should be amended to allow CPAs to exchange federal real property for non-federal real property of comparable or greater market value.

Proceeds of Sales of Federal Real Property

Recommendation 5.11

All proceeds received by a CPA from the disposal of any federal real property managed by the CPA should be placed in a trust or segregated fund for future infrastructure investments by that CPA.

Environmental Liability

Recommendation 5.12

Neither CPAs nor their directors or officers should be liable for environmental conditions that pre-date the creation of CPAs. The Government of Canada should indemnify CPAs and their directors and officers for claims arising from pre-existing environmental issues.

Environmental Information

Recommendation 5.13

The Government of Canada should be responsible for the cost of identifying, monitoring and reporting environmental risks existing at the time it created the CPAs.

Recommendation 5.14

CPAs should be responsible for the cost of maintaining current information on environmental risks arising after creation of the CPAs.

Merger of CPAs

Recommendation 5.15

The CMA should be amended to permit mergers of CPAs where the resulting entity meets the objectives of the National Marine Policy and of section 8(1) of the CMA. Any such process should ensure that all affected stakeholders have input into the final decision to integrate or merge CPAs.

Governance

Recommendation 5.16

The Minister should nominate individuals from the list of nominees recommended by the user nominating committee to sit as CPA board directors. In the event that the committee proposes an insufficient number of nominees, the Minister may nominate any other qualified individuals.

Recommendation 5.17

The CMA should be amended to permit a person who is a director, officer or employee of a user to sit on a CPA board of directors.

chapter 6 | RECOMMENDATIONS CONCERNING THE ST. LAWRENCE SEAWAY

Location of Head Office

Recommendation 6.1

Section 97(2) of the CMA should be amended to allow the board of directors of the St. Lawrence Seaway Management Corporation to locate the head office of the organization wherever the board deems most appropriate from a business and operational perspective.

Enforcement

Recommendation 6.2

Part 4 of the CMA should be re-examined to ensure that it contains more economically viable and efficient provisions for detention, guarantees and release of ships accused of offences under the CMA.

Notice of Meetings

Recommendation 6.3

Section 83(2) of the CMA should be amended to read as follows:

The not-for-profit corporation shall, at least thirty days before a meeting, have notice of the meeting published *on the corporation's web site or* in a major newspaper published or distributed in each city mentioned in the agreement, setting out the time and location of the meeting and specifying that the financial statements relating to the operation of the Seaway are available to the public at its principal place of business. *(amendment emphasized)*

Recommendation 7.1

The Government of Canada should ensure that the Port Divestiture Fund enables the process of transferring public ports to provincial governments, municipal authorities, community organizations or private interests to continue.

Recommendation 7.2

The Government of Canada should cooperate with and encourage provincial governments to take over public ports that the provinces consider important to local industries and therefore to the local, provincial and national economy.

Recommendation 7.3

A CPA should not take over or amalgamate with a public port without:

- consultation with relevant provincial and municipal governments and users; and
- maintaining the level of productivity, flexibility and operating costs afforded by the public port concerned.

Recommendation 7.4

The Government of Canada should continue to maintain the infrastructure of public ports, including the physical plant, dredging and navigation aids, until they are actually transferred.

Recommendation 7.5

The Government of Canada should continue to exercise its full jurisdiction over environmental, navigation, traffic and safety issues in all public ports, including those that have been divested.

chapter 8 | RECOMMENDATIONS CONCERNING PILOTAGE**Arbitration**

Recommendation 8.1

The *Pilotage Act* should be amended to include a provision similar to section 164(1) of the *Canada Transportation Act* concerning an arbitrator's request for additional information.

Composition of Pilotage Authority Boards of Directors

Recommendation 8.2

The selection process for board members for Pilotage Authorities should be formalized to recognize the current practice of selecting directors on the basis of two members each from the transportation industry, pilots and the public, together with the application of a "knowledge and experience" clause modeled on sections 15(1) and (2) of the CMA with respect to CPAs.

Recommendation 9.1

Where ferry terminal facilities owned by the Government of Canada are to be divested or leased or where leases are to be renewed, such facilities should be divested or leased to local CPAs or similar bodies to ensure equal and fair access for all bona fide ferry operators, with the intention that no one ferry operator would enjoy an unfair monopoly.



Appendix C

List of Observations

National Transportation Policy

Observation 1

There is a requirement for a clear commitment by the Government of Canada to promote and more fully recognize and integrate the marine transportation industry into the *Canada Transportation Act*.

Observation 2

There is a need for the Government of Canada to develop a progressive environment that encourages both private and public sector investment promoting innovative financing solutions.

The St. Lawrence Seaway

Observation 3

The future of the Seaway requires the leadership of the Government of Canada and the commitment of all stakeholders, including the provinces, to determine whether the Seaway should continue to be a necessary part of our nation's future transportation network.

The Environment

Observation 4

Increased use of marine transportation and its integration into the multimodal system is an ideal way to help achieve Canada's commitment to the Kyoto Protocol for reduction of greenhouse gases.

Marine Services Fees

Observation 5

The Panel agrees with the submission of the Regional Marine Advisory Boards and the National Marine and Industrial Coalition regarding the elimination of Canadian Coast Guard – Marine Services Fees.

Observation 6

The Government of Canada should continue to be responsible and pay for dredging in waters up to the boundaries of CPAs and public ports.

Public Awareness of Marine Transportation

Observation 7

There is a need for the Government of Canada and other stakeholders to raise the level of public awareness of the important role played by marine infrastructure and the marine transportation industry in our national economy.

Intergovernmental Cooperation

Observation 8

Intergovernmental cooperation to foster the growth of our marine transportation industry requires the leadership and encouragement of the Government of Canada.

Security

Observation 9

It is appropriate for the Government of Canada, rather than the marine transportation industry, to bear the expense of implementing national security measures.

Pilotage

Observation 10

The Minister of Transport has endorsed 21 recommendations arising from a review of major pilotage issues completed in September 1999. It is now up to the Government of Canada to ensure expeditious implementation of the outstanding recommendations in the interests of a more competitive marine transportation industry, helping to fulfil the goals of the CMA and the National Transportation Policy.