

# **VOLUNTARY IMO MEMBER STATE AUDIT SCHEME**

## **AUDIT OF CANADA 11 to 18 JUNE 2007**

### **FINAL REPORT**

**OCTOBER 2007**

#### **1 Executive Summary**

1.1 An audit of the maritime administration of Canada was undertaken between 11 and 18 June 2007 by three auditors drawn from the United States, Panama and Germany. The scope of the audit included the flag, port and coastal State obligations of Canada in relation to the mandatory IMO instruments to which it has acceded. Visits were made by the auditors to responsible entities within the Canadian administration, including Transport Canada Marine Safety (TCMS), the Transportation Safety Board of Canada and the Ministry of Fisheries and Oceans, which included the Canadian Coast Guard, and Canadian Hydrographic Service. The audit was conducted through presentations, interviews and the examination of documents.

1.2 The auditors concluded from the information available to them that Canada substantially meets its obligations in respect of the mandatory IMO instruments to which it is a Party and also the Code for the implementation of mandatory IMO instruments. The audit identified a number of areas of good practice and also identified areas where improvement was possible. The latter however were relatively minor in relation to the overall efficiency of the administration.

1.3 The following report provides detail of the findings and the evidence on which these are based is to be found in the appendices to the report.

#### **2 Introduction**

2.1 The Voluntary IMO Member State Audit Scheme creates a basis to assess the degree a Member State conforms with its obligations set out in the various IMO instruments made mandatory by the ratification by the State. In addition, the Code for the implementation of mandatory IMO instruments (resolution A.973(24)) stipulates a number of principles a Member State should adhere to in order to achieve a maritime administration capable of improving its performance by a set of standards for the achievement of best practice for the benefit of maritime safety and pollution prevention.

2.2 For Canada, a Memorandum of Cooperation was agreed with the IMO for the mandatory IMO instruments ratified by Canada to be verified using the principles of the Code for the implementation of mandatory IMO instruments A.973(24), here in after “the Code”.

### 3 Background

3.1 Following the adoption of the Framework and Procedures for the Voluntary IMO Member State Audit Scheme (resolution A.974(24)) by the 24<sup>th</sup> regular session of the Assembly, a number of Member States volunteered for audit under the Scheme. The current audit of Canada was undertaken using the principles established under resolution A.974(24) and the Code (resolution A.973(24)). This report sets out the findings of this audit in the format adopted under section 7.2 of the Procedures for the Scheme.

### 4 Members of the Audit Team

Mr. John Hannon (Lead Auditor)	United States of America
Mr. Jörg Heuckeroth (Auditor)	Federal Republic of Germany
Mr. Alfonso Castellero (Auditor)	Republic of Panama

### 5 Involved Officials from the Member State

5.1 Mrs. Mila Ayeko, Manager, Quality Assurance, Marine Safety, served as guide and focal point for the audit team. For the participants at the meetings and interviews see [\[annex 1\]](#).

### 6 Acknowledgement

6.1 The auditors wish to express their considerable thanks to the various members of staff interviewed and all of the Canadian government entities that participated in the audit. Special thanks to Transport Canada Marine Safety (TCMS) as the lead agency for the audit and for their organizations support and cooperation during this audit. Also, special thanks to Mrs. Christine Jerome of Transport Canada Marine Safety for her administrative support during the preparation for this audit and throughout the visit of the audit team.

### 7 Scope, objectives and activities of the Audit

7.1 The Scope of the audit addressed flag, port and coastal state obligations of the maritime administration of Canada.

7.2 The objectives of the audit were:

- .1 to determine the extent Canada met the obligations imposed upon it through its adoption of the following applicable mandatory IMO instruments:

1. the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974);
  2. the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78) & Annex III,
  3. the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);
  4. the International Convention on Load Lines, 1966 (LL 66);
  5. the International Convention on Tonnage Measurement of Ships, 1969 (Tonnage 1969); and
  6. The Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972); and
- .2 the effectiveness of the implementation of these objectives.

7.3 No mandatory IMO instrument to which Canada is signatory was excluded.

7.4 Implicit in this was also the degree of compliance with the Code which mirrors many of the references set out in the applicable mandatory instruments.

7.5 The audit was conducted using a schedule previously agreed to by the lead auditor and the member state. The methodology used was to establish through a series of visits, interviews, examination of written records and databases, and the objective evidence to determine the extent to which the Canada achieved the objectives of the audit.

7.6 The program followed a process which sought initially to determine the Strategy for the implementation of the instruments, the review processes in place and the arrangements for continual improvement. Following this, an examination was made of the national legislation in place which provides the instruments with force of law. Also, the processes by which the State develops and makes known its interpretations, policies and instructions regarding these instruments, as well as the practical implementation of these arrangements were also reviewed.

7.7 An opening meeting was conducted on 11 June 2007, in accordance with the Procedures of the Scheme (resolution A.974(24)). The agenda is attached as Annex 1 and the list of participants as Annex 3, it was agreed that during the audit, observations and non-conformities would be communicated to TCMS for comments with tacit agreement at the closing meeting which was held on Monday, 18 June 2007 (attached as Annex 2). A draft interim report was tabled at the closing meeting to assist in focussing discussion and the next steps to be taken.

## 8 Overview and general maritime activities of the State

### 8.1 General

8.1.1 The responsibilities for the implementation and enforcement of marine safety and environmental protection programs for Canada are delegated to TCMS as the lead agency. Specific activities concerning coastal State obligations and accident investigation are assigned to a number of other governmental entities under Canada's national laws and as further defined in Interagency Memorandums of Understanding. The tasks of these various entities were described in the pre-audit questionnaire. The audit verified the responsibilities of each entity and reconciled to some extent the functional descriptions provided in the pre-audit questionnaire.

#### *Distribution of Interagency responsibility*

8.1.2 As previously noted, TCMS is the lead agency for all flag, and coastal State activities related to the mandatory IMO instruments. A number of governmental entities support those responsibilities as follows:

- CCG is responsible for the communication of meteorological and navigational warnings, ice hazards, and distress; the provision of vessel traffic services, aids to navigation, environmental response, and search and rescue facilities and services. Additionally, through its platform and expertise, the Coast Guard fleet supports the marine activities of other government departments and agencies that deliver on Canada's international obligations.
- Canadian Hydrographic Services, whose duties include nautical charting as well as other navigational data information services
- Transportation Safety Board (TSB) of Canada, whose duties include casualty investigation and analysis.
- Environment Canada, whose duties include pollution discharge standards and enforcement.
- Department of Justice, whose duties include legal processes related to the creation and enforcement of laws.
- Pilotage, which is part of Transport Canada, but is independent from Marine Safety Division

#### *Strategy*

8.1.3 TCMS has a strategic plan entitled "The Next Wave" for the period 2003-2010, available on the internet at <http://www.tc.gc.ca/marinesafety/TP/TP13111/strategic-plan-2003-2010/menu.htm>. This plan is complemented by the strategic plans of the supporting agencies for those functions performed in support of TCMS's overall legal and regulatory authority. The strategic plans include several objectives for the continuous improvement of the organizational performance and measurements. In the area of compliance and

enforcement, the future objectives include, for example, the increased use of risk based ship inspection regimes, development of appropriate competencies and training for inspectors and crews/operators, delegation of inspection responsibility to recognized organizations (ROs), enhancement of pollution prevention regimes.

8.1.4 *Maritime Regulatory Reform (MMR)* - To move away from traditional periodic inspection programs and reduce regulatory burden on quality companies that demonstrate a commitment to safety and environmental compliance. To make maximum use of alternate compliance programs that emphasize industry implemented safety management systems and audit those systems to verify that regulatory compliance is being consistently maintained. Conduct less direct inspection of ships under a Safety Management System (SMS) and use the saved personnel hours to increase inspection and oversight of non-compliant ship operators, both of those of Canadian registry and foreign ships visiting Canadian ports.

8.1.5 *Organization Headquarters and 5 regions* - The regions carry out programs based on policy promulgated by the Headquarters program managers but the Regional Directors General report directly to the Deputy Minister. The regions set priorities for use of their resources in meeting the overall organizational goals, but must, at a minimum, fulfil legal mandates with respect to the type and frequency of inspections and other missions. Regions follow policy, procedures and work instructions set forth by Headquarters program managers, and match their organizational goals to the overall national strategy. However, Regional Directors General may independently choose to focus local resources to toward regional priorities if they deem it appropriate. Independent regional areas of focus could divert resources away from implementation of the national strategy.

8.1.6 Individual marine inspectors receive a formal appointment from the Director General and are empowered to take enforcement actions and sign certificates based on individual authority and initiative. Decisions of individual marine inspectors are subject to appeal to the Board of Steamship Inspection, chaired by the Director General, Marine Safety. The regional director is not in the chain of review for formal appeals of the decisions of marine inspectors. The Deputy Minister is the last level of review for appeal if denied at all lower levels. Individual inspectors are not empowered to grant exemptions, equivalence or extensions (EEE) to regulatory requirements which must be forwarded to HQ for decision.

8.1.7 *Performance* - The Canadian Government has implemented a management accountability framework for all of its entities and each is required to formally define their performance goals and the measurements for the accomplishment of those goals. Resource allocation to each entity is not directly based on goal accomplishment.

8.1.8 *Resources* - The work force size is as noted in the pre-audit questionnaire. The Canadian CG augments the pollution investigation work force with their personnel. Marine Safety and other Federal agencies are in a very low growth situation. TCMS was downsized by 25 positions in the late 1990's when it was reduced as part of a government wide review. The downsizing was coincidental with the expansion of authorizations to

ROs to perform a portion of Canada's flag State inspection and certification programs on Canadian flag ships subject to the international conventions. TCMS has not recouped those full time equivalent (FTE) positions and does not anticipate that further FTE will be forthcoming to the organization even in the face of expanded regulatory programs. The increasing use of MMR is expected to offset the need for additional FTE even in the face of expanding missions.

#### 8.1.9 Findings

**The audit established that Canada has undertaken reviews to improve their overall organizational performance. Long-term objectives are established to promote continuous improvements and they are communicated through the annual report of TCMS and other supporting organization plans. Measures based on pollution incidents, port State control, ship deficiencies and marine casualty incidents are used to determine trends.**

**Specific measures with regard to process control and cycle time are in place, e.g. how many legislative projects are in process and what is the time for their completion, assess the progress of the objectives in terms of more detailed and specific targets for meeting the objectives. These measures confirm Canada's compliance with the Code, Part 1, paragraph 3.**

#### *Non-Conformities*

Form A-NC-01

**TCMS did not provide IMO with some of the mandatory reports required by MARPOL 73/78 (MARPOL 73/78, Article 11(1) and Article 12(2); Code, Part 1, paragraph 7.3) .**

#### *Corrective action*

*Annual MARPOL Report for Canada for 2006 was submitted to IMO on 31 August 2007. Transport Canada Marine Safety (TCMS) has established a national web-based database for pollution incidents and investigations. Data is input by regional inspectors who investigate MARPOL violations. Information on port State inspections is maintained in databases and is already being forwarded to the IMO through Canada's membership in the Paris and Tokyo MOUs. As the necessary national information is now being collected, Canada will resume MARPOL reporting.*

## 8.2 Flag State activities

8.2.1 As noted previously, TCMS falls within Transport Canada, which is responsible for all modes of transportation. TCMS is the organization responsible for the mandatory IMO instruments relating to flag State activities. The obligations of the mandatory instruments are delegated to the five regional divisions (Code, Part 2, paragraph 16). TCMS is also responsible for carrying out maritime casualty investigations as well as being responsive to the recommendations resulting from casualty investigations conducted by the TSB.

8.2.2 TCMS reduced personnel resources by approximately 25 full time equivalent (FTE) positions when the organization was established as a separate entity from the Canadian Coast Guard and when they simultaneously delegated ship inspections to recognized organizations. There is no long range plan to increase their resources for their flag State obligations (Code, Part 2, paragraph 23.2).

8.2.3 A formal externally audited Quality Management System (QMS) is established for its STCW activities. An external audit was conducted by the United Kingdom's Maritime and Coast Guard Agency in 2001. For the remainder of TCMS's and its affiliated organizations, a formal QMS is not established (Code, Part 2, paragraph 16.2); but internal quality procedures and standards are to some extent used for some of the activities within HQ and the regions. The Canadian Hydrographic Service has an ISO 9001 quality system certification which is externally audited by NSF International Strategic Registration, Ltd.

8.2.4 As previously noted TCMS's flag State responsibilities are augmented by other governmental organizations as well as being divided up within TCMS by internal divisional responsibility. Below is a description by function.

### ***Legal and Regulatory***

8.2.5 TCMS is the government entity with principle responsibility for the preparation of new legislation and improvements to existing legislation related to enforcement of the mandatory IMO instruments. The legal review and legal matters are the responsibility of the Department of Justice (DOJ). The [legal and regulatory] division at TCMS has an established formal process for the preparation of new legislation. Tracking of legislative review is maintained in a database of pending legislative and regulatory projects

8.2.6 *Legislation* - The agencies develop the regulatory framework and forward draft documents via DOJ to Parliament requesting enactment into national law. An intermediate process of industry concurrence is conducted during the development process thru the Canadian Marine Advisory Council (CMAC). This industry feedback occurs prior to submission of the draft legislation to Parliament. TCMS generated regulatory and legislative project timelines are driven in part by the schedule of the Parliament, which, depending on the legislative calendar, may induce substantial delays. Once passed by Parliament into law, regulations are published in the Canada Gazette and

after a public comment period become final rules. The average time for a regulatory project from agency initiation until final enactment into law and regulation has been reduced over the last several years from an average of 3 years to an average of 2 years, in large part due to a more proactive approach by TCMS to assign additional resource hours as needed to meet the schedule demands of DOJ and legislative staffs.

8.2.7 The program division responsible for that enforcement area drafts the regulatory content and the regulatory services and quality assurance division assists them by ensuring that the drafts meet the legislative process requirements. There are no attorney advisors permanently assigned to the staff of Transport Canada, but the DOJ assigns attorneys to work on the Transport Canada regulatory development teams as needed.

8.2.8 Although Canada gives tacit approval to IMO conventions, it does not formally accede to an IMO convention until the entire national legal regulatory framework is completed. Under this approach, it would never come to pass that an IMO instrument to which Canada has acceded would lack the attendant national legal authority for enforcement as required by the Code, Part 1, and paragraph 7.1. However, in real terms the gap between tacit approval and formal adoption of conventions creates a time lag in the implementation and enforceability of new or amended IMO instruments that the Code asks nations to eliminate. Whatever the legal process, the effect is that the time gap may leave ship operators in a compliance limbo status since Canadian ships may lack the commensurate mandatory convention certificates and TCMS does not yet have the legal authority to compel compliance. Although it is the position of TCMS that port States should not enforce mandatory conventions on Canadian flag ships to which Canada has not acceded, there is still a very real possibility that they will face detentions in any case if port States apply a no less favourable treatment policy (which is Canada's policy toward foreign ships visiting its own ports).

8.2.9 The current legislative and regulatory process does result in a 100% match of national laws to IMO conventions to which Canada has acceded; but functionally, it still represents a delay of enforcement authority past the actual implementation dates of the relevant IMO instruments. The Canada Shipping Act of 2001, which is expected to come into force on 1 July 2007, will finally incorporate many of the annexes of MARPOL and amendments to SOLAS already in force internationally into Canadian law and regulation. This legislation will then allow Canada to formally adopt those provisions and enforce them on ships of its own flag subject to those conventions.

8.2.10 *Policy, procedures and work instructions* - This internal guidance is not publicly available and is used to assist TCMS personnel with uniform implementation of laws and regulations. Policy is advisory in nature and can not establish requirements that are not specified in law or regulation. Field personnel interviewed during the audit noted that the majority of international convention requirements that have come into force in recent years were not accompanied by any national policy for implementation. In the opinion of the inspectors this policy void has necessitated that individual inspectors, district offices or regions develop implementation policy. Inspectors interviewed noted that in many cases they relied upon policy issued by the International Association of Classification

Societies (IACS) since this body produces policy for use by the ROs to which Canada has delegated inspection of some of its ships. Conversely, TCMS HQ program managers take the view that field personnel should possess the commensurate experience to use their best judgement in the application of new requirements and should not require HQ policy guidance in all cases.

8.2.11 TCMS has delegated some tasks and responsibilities to other governmental organizations as well as TCMS's regional directors, who individually address the relevant aspects of implementation and enforcement of the mandatory IMO instruments. Each is familiar with their individual tasks and responsibilities (Code, Part 2, paragraph 27).

8.2.11.1 TCMS has a very robust system for follow up on port State control detentions of Canada flag ships (Code, Part 1, paragraph 13).

## **Penalties**

### **Revocation or Suspension of Mariner Credentials**

8.2.12 Administrative actions against seafarers' licences and documents are implemented directly by TCMS for mariners that commit unlawful acts while employed aboard ship. Canada has a very robust system (ACES) in place which does permit all mariner examiners across the country to access seafarer records and their status. Where seafarers through an investigative process have their certificates suspended due to professional incompetence they are required to turn in the certificate and other documentation and these suspensions are noted in the ACES system.

8.2.12.1 Canada does require a suspension of mariner certificates based on a direction received by the courts when a mariner fails to pay child support payments under the Family Orders Act.

8.2.12.2 The Marine Personnel Standards and Pilotage (AMSP) division in TCMS is charged with enforcing these suspensions. Seafarers are advised to turn in their certificates and the reasons why. As previously noted, the suspension is recorded in the ACES system.

8.2.12.3 When Canada ratifies C185 (latest ILO Seafarer ID convention) a Canadian seafarer who fails a security check will not be able to obtain a Seafarer ID. Canada is working to put this in place presently. Security checks will include a criminal check.

## Monetary fines and/or imprisonment - Criminal Penalties

8.2.13 DOJ adjudicates criminal fines and imprisonment actions upon recommendation by Transport Canada investigators. DOJ has prosecuted several high profile ship pollution cases, but faces constitutional and procedural barriers unique to the Canadian law and legal system. There are procedure limits on the manner in which evidence is obtained and how cases are tried such that it may be difficult to obtain convictions despite overwhelming circumstantial evidence that a particular ship is the source of pollution. For example, one of the limiting factors is that witnesses to environmental crimes cannot be compelled to testify if they choose not to do so. Additionally, the DOJ representative interviewed concluded that, based on his experience, current fines and punishments contained in Canadian law for illegal pollution may not be of adequate severity to significantly discourage violations of international rules and standards, but that this will be bolstered by the Canada Shipping Act of 2001, which is scheduled to take force on 1 July 2007. The law currently allows judgements of up to \$500,000, but the most severe judgement to date has been approximately than half that amount. It was noted by the DOJ representative that this stands in stark contrast to judgements of \$20 Million or more for similar violations in the adjacent waters of the United States. (Code, Part 2, paragraph 21.5).

### 8.2.14 Findings

#### *Observations*

Form A-OB-01

**DOJ has authority to prosecute criminal violations of law related to marine environmental protection but in their opinion, the judgements against those found guilty may not be of adequate severity to provide an adequate deterrent (Code, Part 2, paragraph 21.5).**

#### *Corrective action*

*Penalties for contraventions of MARPOL are contained in several pieces of Canadian legislation which have been updated recently, including the Canada Shipping Act, 2001, the Migratory Birds Convention Act, and the Canadian Environmental Protection Act. The penalty provisions of these vary but they do include maximum fines of \$1M, maximum imprisonment of 3 years; in some instances minimum fines of \$200K or \$500K, additional fines if the offender has benefited from the commission of the offence, and the possibility of the court imposing additional orders. The penalties that have been imposed by Canadian courts have not been near the maximum allowed under Canadian legislation, but the legislation itself is considered to be adequately severe to discourage violations.*

Form A-OB-02

**The enactment of national laws and regulations lags behind the implementation dates of mandatory IMO instruments and regulations to which Canada has given tacit approval; but to which Canada has not yet acceded (Code, Part 1, paragraph 7).**

*Corrective action*

*Transport Canada will continue to promote the ratification of conventions for protection of life, the environment and navigational safety in a timely manner. A national policy will be developed to require all Canadian delegates, attending IMO meetings, to record changes and effective dates and initiate the national regulatory modifications or seek support for a legislative initiative. This will enable international amendments to be incorporated in a timely manner.*

*Operations and Environmental Programs*

8.2.15 The division is responsible for interpretations of SOLAS, MARPOL, Load Line, Tonnage and COLREGS, and the granting of certificates as well as consideration of requests for extensions, exemptions, equivalence (EEE) to compliance with those conventions.

8.2.16 The division provides the Administration's interpretations regarding SOLAS and creates policy as necessary to clarify the Administrations' position in those areas where discretion is granted by the Convention in the manner of its application. This interpretive role includes the granting of permission for equivalent compliance arrangements within the limits granted to Administrations by the IMO regulations. This includes the granting of extensions of time for compliance with otherwise mandated requirements of SOLAS. The Administration HQ has retained exclusive authority for granting EEE, and TCMS uses the Board of Steamship Inspection review process to process EEE requests. The Board process requires a minimum of three board members approve EEE requests before granting. Requests may be initiated at any level of the organization; but the majority are initiated at the inspector level with subsequent district and region review before final consideration for approval at Headquarters.

8.2.17 The Headquarters office maintains electronic files of all ships under its flag and all correspondence related to requests for EEE. As part of the audit a sample of EEE requests were reviewed from auditor selected ships' files and all were found to be in accordance with the procedure described by the Headquarters program managers (Code, Part 2, paragraph 16.5). All of the EEE records sampled showed that the Administration had acted within the scope of authority granted by the convention regulations. However, in one instance, there was no evidence that the required notification of the equivalence was provided to IMO as required by the 1966 Load Lines Convention.

## **Design & Equipment**

8.2.18 A separate division is responsible for the review and approval of equipment or type approved systems. Canada grants specific approvals for shipboard safety, environmental protection and engineering equipment. In general, Canada does grant reciprocal approval based on other Administrations, EC or RO approval. (Except as noted below). The list of Canadian approved equipment is posted on the TCMS web page. In the case of reflagged vessels a process is in place for the evaluation of existing systems to grant equivalence to Canadian approval standards.

8.2.18.1 With respect to radio, navigation and colreg equipment TCMS accepts proof of type-approval to IMO standards if issued by or on the authority of a government that is a party to SOLAS"

## **Manning**

8.2.19 Both regulation and internal process documents are published for the issuance of SOLAS safe manning certificates. The ship operator submits the request for ship manning to the office that is conducting the inspection for certification. RO's are not authorized to issue safe manning certificates. Requests for manning equivalence are reviewed and approved by the HQ program managers.

## **Tonnage**

8.2.20 Currently TCMS uses the International Tonnage Certificate; but does have some ships that are grandfathered under a previous domestic tonnage scheme. Tonnage evaluation is conducted by the RO or by other companies or individuals authorized by the Administration. In the case of an RO, the tonnage certificate is issued directly for all other authorized persons, the tonnage calculations are submitted to the district office where review of the calculations is conducted and the tonnage certificate is issued by the Administration. Oversight of RO tonnage calculations is conducted by regional office with additional process oversight conducted by the HQ program managers. In cases where the ship was issued a tonnage certificate by a previous Administration, the RO is requested to conduct a review of the previous tonnage calculations.

8.2.21 It could not be established if there was a process for ships which have a grandfathered regulatory tonnage and are therefore exempt from SOLAS and MARPOL when engaged on international voyages, to comply with ISM Code and ISPS if their ITC tonnage was in excess of 500 GT. However, to the knowledge of the program managers none of the grandfathered domestic vessels engage in international voyages.

## **8.2.22 Finding**

### ***Non-conformity***

Form A-NC-02

**It was established during the audit that a single EEE for Load Lines equivalence was properly issued but there was no record available to demonstrate that it was filed with IMO as required (LL 66, Article 6 and Code, Part 2, paragraph 15).**

*Corrective action*

*Information regarding the exemption has now been sent to IMO on 18 September 2007 in accordance with Load Lines Convention 1966, Article 6.*

*Montreal District Office*

8.2.23 The audit team conducted a site visit to the TCMS Montreal Office on June 14, 2007. Montreal is a district office under Quebec region office located in Quebec City. The Montreal office is manned by approximately 20 staff members.

8.2.24 The audit team carried out interviews of marine inspector personnel available that day and reviewed files of a cross section Canadian Flag ships subject to the conventions. (Note: Canada uses the title Marine Inspector in lieu of the title Surveyor, but functionally they have the same meaning) Additionally, the PSC process and filing of the inspections/detentions with IMO and the MOUs' was examined and found satisfactory.

8.2.25 The team visited the port of Montreal VTS centre. The VTS office contained all necessary equipment, and general procedures to cover the responsibilities and necessities of traffic control and coordination for SAR activities. A 24 hour operations is maintained to ensure a continuous surveillance and assistance to the ships in the area. A training facility for the operators is available to carry out the appropriate pre training before they take their responsibilities in a watch.

*Delegation to Recognized Organizations*

8.2.26 The Administration has recognized five RO's and each has a signed formal agreement with the Administration that is in accordance with the resolutions A.739(18) and A.789(19). Ships subject to the conventions may participate in a Delegated Statutory Inspection Program (DSIP) which allows RO's to conduct inspections and issue statutory certificates in lieu of inspection by TCMS marine inspectors. All RO's are full members of IACS.

8.2.27 In the course of the last seven years, the TCMS Quality Assurance Department at HQ conducted just two quality system audit/site visits of two of their five RO's. One of Lloyd's Register of Shipping's (LR) region HQ office in Canada and one of the American Bureau of Shipping HQ/Americas region office in Houston TX. In addition,

they participated as observer at one IACS quality audit of an LR regional office in Halifax, Nova Scotia.

8.2.28 Also TCMS conducts onboard oversight of RO performance for ships certificated under the DSIP. The level of detail of an oversight examination is roughly analogous to a port state control annual exam. These DSIP oversight examinations are carried out on a quadrennial cycle by TCMS marine inspectors with a goal of 25% per year specific to their fleet of responsibility (ships that return to that port on a routine basis. Individual inspection offices manage the oversight program for ships that fall within their responsibility. Any deficiencies are noted in individual vessel records and the RO is contacted for correction of the item.

8.2.29 The Administration was not able to provide national record of the oversight of the RO's to systematically ensure the requirements of resolution A.739(18) , A.789(19) and the agreement between them are being accomplished successfully. Oversight records are maintained in individual ship's file and managed by respective district, but no comprehensive national oversight tracking is managed at the HQ level. Deficiencies noted by the TCMS marine inspectors during oversight are corrected as required, but are not documented for the purpose of measuring ROs performance overtime.

8.2.30 *ISM Code* -Mandatory ISM Code audits and certificate issuance is carried out by ROs. Oversight of RO audits of Canadian ships subject to the ISM Code is coordinated by the Quality Assurance Department at TCMS Headquarters. The HQ staff may attend as observers at DOC audits. A DOC audit notification system has been established with the RO's. Oversight of SMC audits aboard ship are carried out by district and regional offices. There is no oversight target established in policy for ISM code certification. No minimum amount of time is established for the prior notification and so in many cases the short advance notice precludes an Administration representative from attending. However, given the small number of Canadian ships subject to SOLAS, it appeared that a sufficient sample of ISM audits have been attended to adequately monitor RO performance. In the case of ships not enrolled in DSIP, but that have ISM certification by an RO, there is no formal process to ensure that the TCMS inspection deficiency history for the ship is communicated to the RO for consideration in their ISM audits. Individual inspectors may contact the RO that issued the ISM code certificate if in the opinion of the marine inspector a deficiency detected during inspection indicates a potential failure of the Safety Management System. For DSIP ships this notification is already formalized in IACS procedures PR-9 and PR-17.

### ***Training and Human Resources***

8.2.32 The department is responsible for planning, organizing and managing all training of TCMS personnel, including marine inspectors. There are written procedures for employing new personnel generally and marine inspectors in particular. For marine inspectors the hiring process includes an assessment of their qualifications and written examination. The post hire process is less detailed but qualifications are required and

documented in conformity with the principles set out in the Code, Part 2, paragraphs 27-37.

8.2.33 A training course is mandatory to receive initial marine inspector qualifications (qualifications are known as appointments within TCMS) and to obtain other qualifications, e.g. Pollution Prevention Officer (PPO) that are not directly linked to marine inspection. Special training courses are sponsored by the Region Office on an as needed basis for inspectors that are required to do inspections on certain types of ships such as oil tankers, etc. Not all inspectors need all specialized training depending on the ships that trade in that region, and the Manager of the Region decides what training their inspectors require. The funding for specialized training is managed by the Regional Office. Training for previously qualified marine inspectors is provided on an as needed basis and inspectors for skill enhancement and update. Each marine inspector has a training record that is maintained at the local level. Once a qualification is obtained, there is no mandatory requirement for update or renewal regardless of the time elapsed since the inspector has last performed an inspection of that type.

8.2.34 TCMS HQ has a database of all marine inspectors which records the type of appointment that each inspector has obtained via mandatory training plus on-the-job training as outlined above.

8.2.35 All marine inspector qualifications must receive approval at the HQ level before work can be performed in that discipline area. Granting of a qualification is based on the favourable recommendation of the marine inspectors immediate supervisors, plus the district and regional offices managers. There are no standardized checklists used to verify what inspectors have studied, observed and satisfactorily performed during on-the-job training (OJT). The final determination of competence is largely based on the judgment and observation of district managers and their willingness to sign the request for the inspector appointment to a particular permanent qualification. A more formal process for OJT is under development and is expected to be implemented in late 2007.

#### 8.2.36 Findings

##### *Observations*

Form A-OB-03

**Aside from the endorsements of superiors, there is no documented system that controls the process of on-the-job training verification that individual inspectors have addressed the minimum knowledge and skills for inspection of a ship type prior to granting a qualification. There was no systematic approach for constantly updating the knowledge of marine inspectors. Training is made**

available but is not mandated or part of a systematic training plan (Code, Part 2, paragraphs 34 and 35).

*Corrective action*

*TCMS is in the process of introducing a formalized “on-the-job training” for inspectors. The National Training Programme will evaluate the areas for further development suggested by IMO audit team and make a proposal to the Steering Committee to review the requirements and resources needed to develop a program that will address our obligations.*

Form A.OB-05

**The Administration was not able to provide a record of the systematic oversight of ROs that ensures the requirements of resolutions A.739(18) and A.789(19) and that the agreement between Canada and an RO are planned and accomplished successfully over specified interval of time (Code, Part 1, paragraph 10 and Part 2, paragraph 20).**

*Corrective action*

*National monitoring of ROs is recorded on the Delegation of Statutory Inspections Program national monitoring form. This form will provide a record of TCMS’s role in operational monitoring of ships that have been delegated to ROs. The purpose of monitoring is to fulfil TCMS’s part to effectively evaluate ROs in carrying out their task and responsibilities delegated under the Canada Shipping Act.2001. This form will provide the comprehensive oversight data for evaluation of ROs’ performance by the responsible Director in TCMS headquarters.*

### 8.3 Investigation of Maritime Accidents

8.3.1 The Transportation Safety Board of Canada (TSB) is an independent agency created in 1990 by an Act of Parliament (Canadian Transportation Accident Investigation and Safety Board (CTAISB) Act). Under this legislation, the TSB's role is to advance transportation safety in the federally regulated elements of the marine, rail, pipeline, and air transportation systems.

8.3.2 The objective of the TSB is to advance transportation safety by conducting independent investigations including, when necessary, public inquiries into selected transportation occurrences in order to:

- make findings as to their causes and contributing factors;
- identifying safety deficiencies; making recommendations designed to eliminate or reduce any such safety deficiencies;

- report publicly on its investigations and on the findings.

8.3.3 The TSB has the exclusive authority to make findings as to causes and contributing factors when it investigates a transportation occurrence. The jurisdiction of the TSB includes occurrences in or over Canada. The TSB may also represent Canadian interests in foreign investigations of transportation accidents involving Canadian registered, licensed, or manufactured ships, railway rolling stock, or aircraft. In addition, the TSB carries out some of Canada's obligations related to transportation safety investigations at the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO).

8.3.4 The TSB was created as an independent agency, to address the potential for conflict of interest where matters being investigated include activities of Transport Canada. The TSB reports annually to the Canadian Parliament on its activities, findings and recommendations through the President of the Queen's Privy Council.

8.3.5 TCMS may name a Minister's Observer for high profile investigations who works closely with the TSB and informs the Department on any safety issues or deficiencies uncovered during the course of an investigation. TCMS may also investigate marine accidents to determine any regulatory infractions under the Canada Shipping Act and lay charges if warranted.

8.3.6 Marine casualty investigation obligations under the conventions and as per resolution A 973(24) are carried out by TSB and/or TCMS.

8.3.7 The TSB identifies safety deficiencies in transportation systems, primarily through the investigation of accidents and incidents. The goal is always to identify the vulnerabilities of transportation systems that might cause future accidents or contribute to their severity.

8.3.8 The primary purpose of TSB investigations is therefore prevention. And they believe that the best way to accomplish that purpose is to learn how the transportation system as a whole functioned to produce an occurrence. TCMS, but not TSB, may pursue enforcement actions as the result of casualty investigation findings.

8.3.9 The TSB marine section has offices around Canada in order to provide easy access in real time to any accidents in Canadian waters, as well as having investigation personnel on duty 24 hours a day, 365 days per year, and procedures in place to investigate any accident to a Canadian ship or casualty involving a Canadian Citizen outside their territory. TSB has a sufficient number of qualified and experienced investigators that pass through a process of selection, evaluation and training before they are authorized to perform their duties. The agency has a pre-authorized budget which allows them to assign appropriate investigative resources when an accident occurs. TSB measures and analyzes in a systematic way their organizational performance and uses those results in the crafting of future plans and goals.

8.3.10 Most of the investigations carried out by TSB are outside the scope of the IMO mandatory IMO instruments and involve domestic ships accidents. However, in cases where reports to IMO were required, it was well documented that the reports were provided to IMO.

8.3.11 TSB investigates all types of marine accidents selecting cases based on their magnitude using their matrix and categorization of the casualties. Very Serious and Serious Casualties as per the resolution A.849 (20), as amended, are always investigated, among other incidents.

8.3.12 TSB receives casualty reports from a variety of sources including: Radio communications from ships to the CCG and web based casualty reporting. TSB maintains a web based form available with instructions for its submittal and the minimum thresholds for required reporting. In cases where the TSB chooses not to conduct an investigation of a casualty that meets the mandatory investigation criteria of the IMO regulations, TCMS investigates. As a matter of course, TSB forwards copies of all marine casualty reports to TCMS. After receipt, TCMS assigns the case to the relevant Headquarters program manager who initiates the investigation process via TCMS regional resources. TCMS could not provide objective evidence that the casualty reports forwarded by TSB were investigated since there is no uniform tracking system to verify that investigations were initiated. In turn, TSB did not require any affirmative acknowledgement of receipt or action on the cases forwarded to TCMS.

8.3.13 The established procedures for reviewing and commenting on TSB reports gives ample opportunities to the parties involved to analyze the report and comment back if necessary on each report. Recommendations to avoid recurrences in the future are also sent to the TCMS for their consideration and action if a regulation, policy or procedure change is needed.

8.3.14 During the audit the team members visited the laboratory that carries out research and technical support for TSB. The lab is an important resource for the investigation if needed. Scientific and technical experts with advanced knowledge and specialized testing equipment are available to assist investigators. For example, the lab has radiographic equipment, 3d modelling capability, computerized simulation/recreation, fire testing, metallurgic analysis equipment and other test resources.

### 8.3.15 **Finding**

#### *Observation*

Form A-OB-04

**TCMS investigates some casualties that may not be investigated by TSB, but which may require mandatory investigation under the IMO regulations. TCMS does not maintain a formal tracking system for**

the investigations forwarded by TSB to verify investigations are completed by TCMS personnel (Code, Part 2, paragraph 10).

*Corrective action*

*TCMS will review the present process with a view to building in a tracking mechanism for these types of casualty reports. Presently when reports are received, they are distributed to appropriate groups for review and further processing as needed.*

**9 Port State activities**

9.1 TCMS is responsible for port State control. Canada is a member of both the Paris MOU and the Tokyo MOU. TCMS follows the Paris MOU/Tokyo MOU instructions and guidelines for PSC which have been adopted into national law.

9.2 Port State control (PSC) activities take place in several ports in the 5 regions. Containerships, Bulker, Tanker, General Cargo and RoRo ships are present in Canadian ports. More than 1200 ships were inspected in 2006 and Canada has fulfilled the 25% requirement of the Paris MOU.

9.3 All PSC inspection reports are forwarded to the Head office of TCMS and reviewed by the Inspection and Operation Standards [Division], Marine Safety, who retains exclusive authority for their final entry into the MOU databases.

9.4 Training and qualification of PSC officers is carried out in accordance with IMO and Paris MOU guidelines using an established qualification scheme. Special PSCO training is part of the TCMS training for TC marine inspectors and the PSCO's take part in several seminars and training programs at the Paris MOU.

9.5 Information to flag State, ROs and Class, in case of detention, is done by PSCO or the Regional Office directly after a detention.

9.6 TCMS has a systematic port State control program that fulfils the requirements of the Code.

**10 Coastal State activities**

**General**

10.1 Canada effectively discharges all of its coastal State obligations through a number of governmental entities who share Coastal State responsibilities according to SOLAS chapters IV & V. TCMS acts as the lead agency for legal and regulatory authority with respect to fulfilment of Coastal State responsibilities under the mandatory IMO instruments. (Part 3 of the Code)

### *Canadian Coast Guard (CCG)*

10.2 The Canadian Coast Guard (CCG) as Canada's largest special operating agency, provides a range of marine services and platform that help the country to achieve its marine objectives and priorities. Specifically with respect to the SOLAS convention, the CCG is responsible for the communication of meteorological and navigational warnings, ice hazards, and distress; the provision of vessel traffic services, aids to navigation, and search and rescue facilities and services.

10.3 Canada is a geographically large country whose total Coast Line is the longest of any nation in the world, at 58,808 kilometres (excluding islands). In addition to ocean coast line, Canada shares jurisdiction with the United States of America for the Saint Lawrence Seaway and the Great Lakes, the latter being the largest fresh water body in the world. The majority of the population of Canada lives principally along the southern boarder areas adjacent to the United States. The CCG has fostered a strong partnership with the US Coast Guard for the sharing of SAR information and resources in the event of a marine casualty in adjacent areas.

10.4 Canada's SAR resources are readily available and on call at all times. A deployment time of less than 30 minutes for each SAR mission is achieved in over 95% of the cases. The CCG is an intra-governmental service provider organization and as such does not have independent law enforcement authority. CCG vessels and helicopters serve as enforcement platforms to support the water based enforcement responsibilities of a variety of other Canadian Government entities that are charged with law enforcement responsibilities for various activities in and around the marine environment.

10.5 CCG is responsible for the maintenance and placement of a variety of aids to navigation. The CCG conducts surveys of the nations waterways and makes an assessment for the need for the placement of an AtoN based on navigational requirements.

10.6 CCG is also responsible for alerting mariners to the seasonal hazards presented by ice both in the form of icebergs and as pack ice that may impede a waterway or coast line for navigation. Environment Canada in cooperation with the USCG, conduct the international ice patrol for the seasonal tracking of icebergs in the Atlantic Ocean.

10.7 The CCG is responsible for oil spill response coordination, but TCMS is the lead agency for marine environmental protection enforcement actions.

10.8 The CCG provides ship platforms for Hydrographic survey as well as fisheries enforcement.

10.9 The CCG has the overall responsibility for providing the necessary facilities for radio communication (GMDSS, MF VHF, NAVTEX) and has established facilities for both A1, A2 ,A3 and A4 areas with very good coverage.

10.10 Government Agencies that utilize CCG platforms must share those platforms with the other agencies. The availability of CCG platforms at any given moment may not fully meet the requirements of all agencies at all times and some prioritization of mission availability is necessary.

### *Canadian Hydrographic Service*

10.11 This organization is responsible for hydrographical survey and charts for Canadian waters. Data is collected and maintained and charts are printed at the point of delivery upon request so that they contain the most current information. Tidal tables are also published. Hydrographic Service uses CCG platforms conduct charting surveys and is one of the governmental entities noted in 10.10 above. The frequency and scope of Hydrographic survey for any given sea area may therefore be dependant on CCG platform availability. The Hydrographic Service is ISO 9001 certified for its quality processes for the effective and efficient distribution of information on navigation in Canada's waters.

## **11 Conclusions**

### *Areas of positive development*

11.1 Canada participates in various outreach activities with the maritime community to stimulate a culture for the improvement of safety and environmental protection. (Code, Part 1, paragraph 12).

11.2 The TSB as well as the Hydrographic Service have implemented quality systems and process measurement and improvement tools that might be beneficial to use as a benchmark in the development of TCMS and other government entity measurement of processes.

11.3 The CCG is one of the world leaders in the area of maritime search and rescue as well as performing other coastal State responsibilities. The CCG programs and their personnel would provide an excellent source of knowledge and experience to IMO Member's States that are seeking to develop or enhance their own abilities in the area of coastal State responsibilities.

11.4 The TCMS's proactive approach for stewarding legislative and regulatory projects from agency initiation to final enactment into law and regulation is making significant improvements toward the timely enforcement of mandatory IMO instruments through national laws and regulations.

### *Areas for further development*

11.5 Consideration should be given in the next update of the marine inspector bookshelf (MIB), to include a separate icon or part, that clearly indicates the new amendments or procedures that were incorporated in the MIB, in order to assure that the inspectors will be aware and pay specific attention to the new changes with regards to new conventions, regulations or any additional national requirement/procedures they need to implement. (Code Part 2. 16.4.5)

11.6 TCMS HQ program managers should more carefully evaluate the need for accompanying national policy, guidelines or work procedures that should be promulgated when new IMO regulations, amendments or national laws and regulations come into force. Careful consideration should be given as to the complexity of the new requirements and their potential for inconsistent application, misinterpretation and enforcement by individual Regions, Districts and marine inspectors absent such national guidance. (Code Part 2 (16.4.5))

11.7 The training program should address and identify an appropriate time schedule for the updating of training and qualifications of marine inspectors, especially for high risk ships such as Gas Carriers, Chemical tankers, Oil Tankers, Passenger Ships and Bulk Carriers. The need for specialized training for inspection for new systems and equipment should be evaluated for new inspectors and as technology evolves overtime for existing inspector qualifications. Additionally, as an adjunct to item 11.6 above, training may be required to convey new policy and procedures to the effected marine inspector workforce when a new regulatory requirement occurs. The current process puts the onus on the individual marine inspector to initiate a request for training rather than implementation of a national strategy. (Code Part 2. 23.5 and 35)

11.8 Forty percent or more of the Canadian flag ships subject to the international conventions currently receive inspection and certification from an RO as part of Canada's voluntary DSIP. One Hundred percent of Canadian flag vessels subject to the international safety management code receive their certification from an RO. The current level of oversight of RO's for their quality management system is insufficient to ensure that the ROs are not subject to systemic non-conformities. The collection and measurement of corrective actions resulting from both the oversight inspections by the Administration as well as the internal oversight conducted by the RO could be more systematically evaluated. In the case of Lloyd's Register of Shipping that performs the majority of DSIP and ISM as an RO for the Canadian flag, they were subject to just one independent quality audit and one IACS audit observation, both of minor regional offices that do not make organizational policy, over the course of seven years. Additionally, Canada may wish to consider increasing the frequency of onboard oversight of DSIP ships from the current quadrennial schedule to a biennial or annual oversight examination, while still retaining the oversight targeting system for increased frequency on high risk ships which is now employed. Since onboard oversight is the baseline source of oversight data from which systemic RO performance trends emerge, this information is essential for the formulation of timely preventative actions which should

be initiated prior to a potential major non-conformance. More frequent and methodical oversight would be beneficial for Canada's RO's in this regard.

11.9 For casualty cases that are referred from TSB to TCMS for investigation, it was established that there is a need to establish a tracking system within TCMS to document that appropriate action on individual cases is taken, especially if the casualty meets the requirements for investigation under the international conventions.

## 12 **Annexes**

1. Opening Meeting Agenda
2. Closing Meeting Agenda
3. Opening Meeting Attendees
4. Audit Schedule & Interviews

### 12.1 *Observations*

Form A-OB-01  
Form A-OB-02  
Form A-OB-03  
Form A-OB-04  
Form A-OB-05

### 12.2 *Non-conformities*

Form A-NC-01  
Form A-NC-02

\*\*\*

## Annex 1

Opening Meeting Agenda  
IMO Voluntary Member State Audit  
Ottawa, Canada  
June 11, 2007  
9 AM

1. Member State Opening Remarks
2. Introductions of Member State Representatives
3. Introduction IMO Audit Team
4. Remarks IMO Lead Auditor
  - a. Objectives, Scope and Conduct of the Audit.
  - b. Terms of Reference
  - c. Audit Program/Schedule
  - d. Communication between the Audit Team and the Member State Liaison
  - e. Reporting of Findings and Feedback
  - f. Manner of Interviews
5. Member State Liaison: Any Administrative matters regarding the audit, such as: Last minute schedule changes, audit locations/facilities.
6. Closing remarks

Annex 2

Closing Meeting Agenda  
IMO Voluntary Member State Audit  
Ottawa, Canada  
June 18, 2007  
9:30 AM

1. Member State Opening Remarks
2. Introductions of Member State Representatives Present
3. Remarks of the IMO Lead Auditor and Audit Team Members
4. Review of the Draft Interim Report
5. Review of Non-Conformities and Observations
6. Review of remaining actions for the audit
7. Remarks of Member State Liaison
8. Closing remarks

## Annex 3

IMO Audit of Canada – Opening Meeting  
 June 11, 2007 / 9:00am to 10:45am  
 Participants List

<b>NAME</b>	<b>TITLE</b>	<b>ORGANIZATION</b>
John Hannon	Lead Auditor	IMO
Alfonso Castellero	Auditor	IMO
Jorg Heuckeroth	Auditor	IMO
Donald Roussel	Executive Director, Regulatory Services and Quality Assurance	Transport Canada
Mila Ayeko	Manager, Quality Assurance	Transport Canada
Christine Jerome	Administrative Assistant, Quality Assurance	Transport Canada
Victor Santos-Pedro	Director, Design, Equipment and Boating Safety	Transport Canada
André St-Laurent	Engineering Consultant, Safety Equipment	Transport Canada
Richard Day	Director, Operations & Environmental Programs	Transport Canada
Ruth Romkey	Director, Program and Technical Training Services	Transport Canada
Paul Mannion	A/Director, Personnel Standards & Pilotage	Transport Canada
Nick Stoss	A/Director General, Investigation Operations	Transportation Safety Board of Canada
Yvette Myers	Director, Investigations – Marine Branch	Transportation Safety Board of Canada
Marcel Ayeko	Manager, Quality, Planning and Performance	Transportation Safety Board of Canada
Steven Troy	A/Director General, Maritime Services	Canadian Coast Guard
Kerry MacDonald	Senior Program Advisor, Planning, Performance and Monitoring	Canadian Coast Guard
Sean Hinds	Manager, Quality Management, Planning & Training	Canadian Hydrographic Services, DFO

## IMO - VMSAS

### OBSERVATION / NON-CONFORMITY NOTICE

(Form A)

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Transport Canada Marine Safety</b>	<b>MARPOL reporting to IMO</b>
<b>Non- Conformity No.: 1</b>	<b>Observation No.:</b>
<p><b>Findings</b></p> <p><b>There is no evidence of MARPOL reporting to the IMO for the period 2001 to 2006 and the flag administration confirmed that they have not submitted the required reports to the IMO.</b></p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>MARPOL 73/78 Article 11(1).</b> The Parties to the Convention undertake to communicate to the Organization:</p> <p><i>(f).</i> An annual statistical report, in a form standardized by the Organization, of penalties actually imposed for infringement of the present Convention.</p> <p><b>MARPOL 73/78 Article 12(2).</b> Each Party to the Convention undertakes to supply the Organization with information concerning the findings of such investigation, when it judges that such information may assist in determining what changes in the present Convention might be desirable.</p> <p><b>Resolution A.973(24) Part I, Paragraph 7.3</b></p> <p>“The availability of sufficient personnel with maritime experience to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the state, including reporting as required by the respective conventions.</p>	
<b>Auditor: Jörg Heuckeroth</b>	<b>Date: 16 June 2007</b>
<b>Team Leader: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Member State: Canada</b>	<b>Date Received: 18 June 2007</b>

## IMO - VMSAS

### OBSERVATION / NON-CONFORMITY NOTICE

(Form A)

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Transport Canada Marine Safety</b>	<b>LLC exemption reporting to IMO</b>
<b>Non- Conformity No.: 2</b>	<b>Observation No.:</b>
<p><b>Findings</b></p> <p><b>The Administration was not able to provide evidence of reporting of a permanent Load Line Convention exemption to the IMO for a Canadian flag ship subject to the 1966 Load Lines convention to which Canada is a Party. The ship was permanently allowed to operate without fixed or portable covers for a ventilation opening on deck as required by the Convention. The permanent equivalence was based on the sheltered location of the vents and the hold dewatering system capability.</b></p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>Load Lines Convention 1966 Article 6:</b></p> <p>(3). The Administration which allows any exemption under paragraphs (1) and (2) of this Article shall communicate to the Inter-Governmental Maritime Consultative Organization (hereinafter called the Organization) particulars of the same and reasons therefore which the Organization shall circulate to the Contracting Governments for their information.</p>	
<b>Auditor: Jörg Heuckeroth</b>	<b>Date: 16 June 2007</b>
<b>Team Leader: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Member State: Canada</b>	<b>Date Received: 18 June 2007</b>

**IMO - VMSAS****OBSERVATION / NON-CONFORMITY NOTICE****(Form A)**

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Department of Justice Canada</b>	<b>Penalty and Enforcement</b>
<b>Non- Conformity No.: -</b>	<b>Observation No.: 1</b>
<p><b>Findings</b></p> <p><b>Based on DOJ experience it was felt that current fines and punishments contained in the law for illegal pollution may not be of adequate severity to discourage violations of international rules and standards. Sentences have ranged from \$20,000 Cdn to \$290,000 Cdn.</b></p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>Code Part 2, Paragraph 21.5</b></p> <p><b>MARPOL 73/78 Article 4(4)</b>  The penalties specified under law of a party pursuant to the present article shall be adequate in severity to discourage violations of the present Convention and shall be equally severe irrespective of where the violation occurs.</p>	
<b>Auditor: Jörg Heuckeroth</b>	<b>Date: 16 June 2007</b>
<b>Team Leader: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Member State: Canada</b>	<b>Date Received: 18 June 2007</b>

## IMO - VMSAS

### OBSERVATION / NON-CONFORMITY NOTICE

(Form A)

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Transport Canada Marine Safety</b>	<b>National Laws and Regulations</b>
<b>Non- Conformity No.: -</b>	<b>Observation No.: 2</b>
<p><b>Findings</b></p> <p><b>The enactment of national laws and regulations lags behind the implementation dates of mandatory IMO instruments and regulations to which Canada has given tacit approval but to which Canada has not yet acceded. This may be due to a lack of staff resources at TCMS Headquarters to manage the volume of projects which are pending.</b></p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>Resolution A.973(24) Part I, Paragraph 7.</b> “When a new or amended mandatory instrument enters into force for a State, the Government of that State must be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure.</p> <p><b>Resolution A.973(24) Part I, Paragraph 7.3</b>            “The availability of sufficient personnel with maritime experience to assist in the promulgation of the necessary national laws and to discharge all the responsibilities of the state, including reporting as required by the respective conventions.</p>	
<b>Auditor: John Hannon</b>	<b>Date: 11 June 2007</b>
<b>Team Leader: John Hannon</b>	<b>Date: 11 June 2007</b>
<b>Member State: Canada</b>	<b>Date Received: 18 June 2007</b>

## IMO - VMSAS

### OBSERVATION / NON-CONFORMITY NOTICE

(Form A)

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Transport Canada Marine Safety</b>	<b>Training</b>
<b>Non- Conformity No.: -</b>	<b>Observation No.: 3</b>
<p><b>Findings</b></p> <p>The qualification and training process for marine inspectors lacks sufficient process documentation to ensure consistent application on a national level.</p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>Resolution A.973(24) Part 2, Paragraph 34</b>            “Flag States may accredit surveyors through a formalized, <u>detailed</u> training program”.</p> <p><b>Resolution A.973(24) Part 2, Paragraph 35</b>            “The flag state should have implemented a documented system for qualification of personnel and continuous updating of their knowledge as appropriate to the tasks they are authorized to undertake.”</p>	
<b>Auditor: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Team Leader: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Member State: Canada</b>	<b>Date Received: 18 June 2007</b>

**IMO - VMSAS****OBSERVATION / NON-CONFORMITY NOTICE****(Form A)**

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Department of Justice Canada</b>	<b>Penalty and Enforcement</b>
<b>Non- Conformity No.: -</b>	<b>Observation No.: 4</b>
<p><b>Findings</b></p> <p>TSB receives casualty reports which require mandatory investigation under the IMO regulations and forwards copies TCMS. TCMS does not maintain a formal tracking system for the investigations forwarded by TSB and could not produce a record that the required investigations were carried out as required by the convention.</p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>Resolution A.973(24) Part I, Paragraph 10</b></p> <p>“Records as appropriate should be established and maintained to provide evidence of conformity to the requirements of the effective operation of the State. Records should remain legible, readily identifiable and retrievable. A documented procedure should be established to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records.”</p>	
<b>Auditor: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Team Leader: John Hannon</b>	<b>Date: 16 June 2007</b>
<b>Member State: Canada</b>	<b>Date Received: 18 June 2007</b>

## IMO - VMSAS

### OBSERVATION / NON-CONFORMITY NOTICE

(Form A)

<b>FINDINGS</b>	
<b>Member State: Canada</b>	<b>Audit Period: 11- 18 June 2007</b>
<b>Transport Canada Marine Safety</b>	<b>Delegation of Authority</b>
<b>Non- Conformity No.: -</b>	<b>Observation No.: 5</b>
<p><b>Findings</b></p> <p>The Administration was not able to provide a record of systematic oversight of ROs that ensures the requirements of the resolutions A739 (18); and A.789 (19) and that the agreement between Canada and the RO are planned and accomplished successfully over a specified interval of time. Oversight records are maintained in individual shipsfiles, and at the local level by individual inspectors, but no comprehensive oversight tracking system of RO oversight is managed at the HQ level to develop a comprehensive view of RO performance. Deficiencies noted by the TCMS marine inspectors during oversight are corrected as required, but are not documented for the purpose of measuring RO performance over time or systematically integrated into the required quality management system review and audit of the RO as a corrective action as appropriate.</p>	
<p><b>Applicable Provisions of the Audit Standard</b></p> <p><b>Resolution A.973(24) Part 2, Paragraph 20</b>            “The flag state should establish or participate in an oversight program with adequate resources for monitoring of, and communication with, its recognized organizations in order to ensure that its international obligations are fully met”</p> <p><b>Resolution A.973(24) Part I, Paragraph 10</b>            “Records as appropriate should be established and maintained to provide evidence of conformity to the requirements of the effective operation of the State. Records should remain legible, readily identifiable and retrievable. A documented procedure should be established to define the controls needed for the identification, storage, protection, retrieval, retention time and disposition of records.”</p> <p><b>Resolution A.739(18), Annex, Paragraph 3 &amp; 3.1</b>            “The administration should establish a system to ensure the adequacy of work performed by the organizations authorized to act on its behalf. Such a system should, inter alia include the following items....”</p> <p><b>Resolution A.739(18), Annex, Paragraph 3.1</b> “Procedures for communication with the organization”</p>	

**Resolution A.739(18), Annex, Paragraph 8.3**

“the requirements of the statutory work for which the organization is authorized, are satisfied”

**Auditor: John Hannon****Date: 16 June 2007****Team Leader: John Hannon****Date: 16 June 2007****Member State: Canada****Date Received: 18 June 2007**