FMC investigation on Canadian Ballast Water regulations

June 06, 2024

In March of 2020, the U.S. Lake Carriers Association (LCA) strongly criticized pending Canadian regulations regarding ballast water management, labeling them as unjust and harmful to U.S. businesses. The legislation begins to apply on September 8, 2024. Now, in response to the concerns from the LCA, the Federal Maritime Commission (FMC) has initiated an investigation into proposed Canadian legislation and potential unfavourable conditions facing American carriers operating within the Great Lakes.

The Canadian regulations

The regulations apply to all vessels operating in Canadian waters, including domestic and foreign vessels, and establish standards for ballast water treatment systems to ensure they meet certain effectiveness criteria in removing or neutralizing aquatic invasive species. The regulations require that the systems treat ballast water at uptake and before discharge at Canadian Great Lake ports.

LCA's concerns

The LCA has expressed concerns that the regulations would impose significant operational burdens on American carriers by requiring them to install new ballast water management systems. The LCA argues that doing so has minimal environmental benefits for Canada, because American vessels uptake but do not discharge ballast water in Canadian waters. The LCA has claimed that the Canadian regulations create a higher financial burden for their members, particularly noting that "Transport Canada is forcing U.S.-flagged vessels operators engaged in foreign trade to Canada to walk away from that market".

The Canadian government's position

In its response to the LCA's petition, the Canadian government has outlined that the general purpose of the proposed Canadian legislation is to mitigate the environmental and economic impacts of invasive species by regulating the management of ballast water discharge from ships operating in Canadian waters.

The government highlights that the regulations are still being discussed with American regulatory agencies, and so the LCA's petition and the FMC's decision are premature.

In response to the LCA's arguments, the government noted that:

- The regulations do not discriminate as they apply the same standard to Canadian and American ships conducting business in Canadian waters of the Great Lakes;
- Fairness, as argued by the LCA, is not defined by costs of compliance but by equal application;
- The LCA wrongly focuses on ballast water to be discharged. However, the applicable international convention, to which Canada is a signatory, also deals with the uptake of ballast water; and
- Foregoing treatment of ballast water for invasive species at uptake would result in a risk that invasive species could be spread downstream.

Navigating next steps

The investigation will focus on whether the conditions created by the Canadian regulations adversely affect American carriers operating in Canadian waters in a manner that does not exist for Canadian carriers operating in American waters. Interested parties, including the Government of Canada, U.S. carriers, and Canadian carriers, are invited to submit comments and information relevant to the investigation.[1]

Footnote

[1] The FMC Requests comments by email to: secretary@fmc.gov. For comments, include in the subject line: "Docket No. 20-10, Comments on Conditions Created by Canadian Ballast Water Regulations in the U.S./Canada Great Lakes Trade." Comments should be attached to the email as a Microsoft Word or text-searchable PDF document.

By

Robin Squires, Zoe Aranha

Expertise

Disputes, Environmental, Transportation, Shipping, United States

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 800 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2026 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.