



WE ARE SHORT SEA SHIPPING  
NOUS SOMMES LE TRANSPORT MARITIME À COURTE DISTANCE

CANADIAN  
SHIPOWNERS  
ASSOCIATION

ASSOCIATION  
DES ARMATEURS  
CANADIENS

August 30, 2013

sent via email – beckhoffb@ottawa.ijc.org

Secretariat – Canadian Section  
International Joint Commission of Canada and the United States  
234 Laurier Avenue West, 22<sup>nd</sup> Floor  
Ottawa, ON K1P 6K6

**Re: Regulation Plan Lake Ontario – St. Lawrence Plan 2014**

Dear Commissioners,

This letter provides formal comments on the International Joint Commission's proposed regulatory initiative, Plan 2014. The Canadian Shipowners Association (CSA) also provided feedback to the Commission at the Technical Hearing in Montréal on July 18, 2013.

The Canadian Shipowners Association is the industry association representing Canadian-flagged vessels that operate in the Great Lakes - St. Lawrence Seaway (GLSLS), along the East Coast of North America, and in the Canadian Arctic. Our members operate a fleet of 80 vessels which moved over 60 million tonnes in 2012 – approximately half of these movements were between Canada and the United States. Our member companies play a significant role in the economy of our shared Great Lakes region; cargo shipments on the Great Lakes – Seaway system generate \$34.6 billion of economic activity within the region annually. The CSA is engaged in a number of initiatives associated with water level management in the Great Lakes and consults regularly with federal and provincial governments, regional scientific and academic bodies, and numerous stakeholders concerned with protecting and enhancing the marine environment.

Since the IJC posted Plan 2014 for public comment on June 13, the CSA has carefully reviewed the elements of the proposal. In doing so, the CSA consulted with experts from the IJC and other industry stakeholders. While supportive of many features, the CSA recommends that certain aspects of Plan 2014 receive additional consideration. Article VIII of the *Boundary Waters Treaty* establishes an order of precedence for the use of shared Canadian and US waters, with the use of water for the purpose of navigation being the second priority. The purpose of Plan 2014 is “to enhance the environment on Lake Ontario and upper St. Lawrence River while retaining the protection and benefits downstream in the lower river equivalent to what they are now.” CSA's member companies support this philosophy, as sustainability is a key objective of Canadian companies conducting short-sea-shipping. The CSA is appreciative of the opportunity to provide comments and appreciates that Plan 2014 is the result of an extensive scientific and regulatory process.





## 1. Order of Approval

Overall, we find that the Order lacks clear prioritisation in accordance with the *Boundary Waters Treaty, Article VIII*. It includes certain additional objectives be considered equally essential as existing mandatory priorities already included in the Treaty. While all of the new objectives are important considerations in Plan 2014, it would be beneficial to present them as principles as opposed to objectives in order to avoid the misinterpretation of the Order's responsibilities in accordance with the Treaty. The Order addresses the "environment" as a separate interest and CSA considers this inappropriate, as the environment should be a consideration for all interests rather than included separately in the Order.

## 2. Governance

CSA views the governance framework as the crucial element of Plan 2014. As this regulatory plan will affect stakeholders over a prolonged period, it is necessary that the governance be robust, predictable, adaptable, and transparent. The governance framework includes the establishment of The International Lake Ontario - St. Lawrence River Board (Board), the Operations Advisory Group (OAG), and includes the Commission itself. The details of the Board's authority appear to be insufficient and are not conducive to building the confidence of affected stakeholders. The challenge is accentuated in conditions of extreme water levels where it lacks the appropriate authority to take action in a timely fashion.

Plan 2014 allows for minor, major and emergency deviations. The Board can implement minor deviations so long as there will not be any appreciable change to water levels in Lake Ontario. In contrast, major deviations may only be implemented when the level of Lake Ontario reaches a trigger level (specified for each quarter month), unlike the current plan which allows for the "storage" of water in anticipation of extreme conditions. Furthermore, a major deviation must be recommended by the Board and then approved by the Commission. This process of approval could lead to further bureaucratic delays and lengthen a period of extreme conditions, as the Commission is not an operational organisation. All three of these constraints would likely lead to increased extreme conditions and a longer period of rectification following a period of extremely low-water levels.

Accordingly, CSA recommends that:

- **The Board have the authority to implement major deviations without seeking the Commission's approval;**
- **Considering the order of precedence stated in Article VIII of the *Boundary Waters Treaty* where commercial navigation ranks second, the Board composition should include the appointment of at least one representative knowledgeable on issues of commercial navigation; and**
- **The IJC define and publish the role of the OAG.**



### 3. Regulation Plan

CSA has evaluated the changes between the current regulatory plan and that proposed in Plan 2014. The IJC has provided a comparison of the two plans by using a theoretical model that compares the plans over an historical period of 101 years. When examined over the entire period, the proposed changes do not appear to have significant consequences to commercial shipping. However, it is critical to isolate and examine situations of extreme levels in order to assess the impact on commercial shipping properly. Although modelling and comparison of plans using historical data is valuable, it would appear that climatic change is resulting in a decreasing level of water supply. This was documented by the IJC in its most recent International Upper Great Lakes Study.

Instances of extremely low-water conditions appear to double under the proposed plan and the magnitude of extreme conditions increased by approximately fifty percent. While this may still seem infrequent over a prolonged period of modelling, the reality is that such instances could have a dramatic impact on commercial operations. Commercial shipping is the most environmentally efficient mode of moving bulk commodities and such extreme low-water conditions would have significant environmental and economic impacts. When water levels decrease, ships must load less cargo in order to maintain a safe draught. For every inch of reduced water level, a ship must reduce its cargo by approximately 100 tonnes. Plan 2014 includes predicted levels when the loss of draught could be as great as 27 inches. A condition of vessel light loading would result in more movements of ships to move the same overall tonnage of cargo and potentially a shift of transportation choice to other less-efficient modes of transportation. Both of these outcomes would have significant negative environmental impact - especially modal shift as one ship can carry as much cargo as 301 rail cars or 964 trucks.

The CSA recommends that:

- **The IJC amend the regulatory plan to reduce the severity of probable extreme low-water conditions to resemble the current plan's projected extreme low-water limits more closely.**

While CSA has concerns about the regulatory impact on water levels in Lake Ontario and in the St. Lawrence Seaway, we are pleased to note that the latest version of Plan 2014 has included amendments that will ensure that equivalent benefits are realised in the lower river to those that exist currently.

### 4. Adaptive Management

The IJC is proposing a framework and strategy that implements adaptive management to address the entire Great Lakes and St. Lawrence River basin. This concept is viewed as progressive and essential to better understanding the impacts of climate change and how to mitigate its effects where and when appropriate. Notwithstanding, the details of its objectives and scope of responsibility are overly vague to be fully supported at this time. This is especially the case with the current regulatory proposal, as it does not sufficiently define how adaptive management might amend Plan 2014 in the future, and it appears to lack a defined and transparent consultative process.



CSA views the Plan 2014 proposal as an aggressive effort to balance priority interests and to enhance the environmental benefits. CSA remains optimistic that minor amendments to the deviation triggers and governance would result in a significantly improved regulatory proposal and would like to engage the IJC further in order to develop the necessary amendments. To this end, we recommend that the IJC establish a working group with commercial navigation representatives to review the data set, trigger levels and governance mechanism before the Plan is finalised and implemented. Although the concept of Adaptive Management is supported, CSA suggests that it is not sufficiently developed to be included in Plan 2014 at this time, but that it should be pursued and resourced appropriately in the near-term in order to support a system-wide approach to managing water levels in the Great Lakes.

The CSA appreciates the opportunity to provide comments and is available to answer further questions as necessary.

Sincerely,

Robert Lewis-Manning  
President

cc. Tim Meisner, Director General Marine Policy, Transport Canada  
Wendy Baldwin, Consul, U.S Transboundary Affairs Division, Foreign Affairs and  
International Trade Canada