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Dear Jerry Rysanek,

Thank you for the opportunity to comment on the Maritime Law Reform Discussion Paper released May 5th, 2005.

As indicated in the numerous meetings and correspondence that the Council of Tourism Associations of BC (COTA) has maintained with the International Marine Policy and Liability branch of Transport Canada over the past 3 years, the BC tourism industry continues to press for every advantage that will help water-based adventure tourism operations weather current and future hard insurance markets.

COTA is the official “Voice of the BC tourism industry”, an industry which last year generated almost \$9.5 billion in tourism spending. We have been charged with representing the interests of the province’s 18,000 tourism businesses and their 117,500 employees.

As you know, COTA has thoroughly examined the negative impacts that the latest hard insurance market has had on tourism operators in BC and across Canada. Our efforts yielded the BC Tourism Industry Insurance & Financing Report whose recommendations have led to the creation of the COTA Insurance and Risk Management Program.

The COTA program is hosted on Adventureinsurance.ca, a Web site that is currently deepening the risk management plans of tourism operations across Canada and awarding them with significant savings on their insurance. Because of the programs balance of technology, risk management materials and expert risk reviews, operators are insured based on their actual risk as well as their revenue and volume. At this point the program is geared specifically to businesses that offer nature-based tourism experiences, including those operations that are water-based such as whale watching operations, kayakers, canoe operations, fishing lodges and others.

Over the course of the past 3 years, COTA has kept Transport Canada fully briefed on the BC tourism industry’s positions as they relate to items such as imposed insurance limits, waivers, the burden of proof imposed on operators, and the looming compulsory insurance regime.

In response to the policy options presented in the Maritime Law Reform Discussion Paper May 2005, COTA suggests the following:

Maintain the Limits of Liability

Although Adventureinsurance.ca improves the insurance climate dramatically, nature-based tourism operations still require additional protections that will only come from government legislation and policy. Part IV of the *Marine Liability Act* (Act) provides such protection in the form of imposed per person limits of liability. In an increasingly litigious North American business environment, such a limit is desirable given that tourists are actively seeking out tourism experiences with a risk component.

Reinstate Waivers for All Water-Based Adventure Tourism Operations

Given the inherent risk contained in all types of water-based adventure tourism activities, COTA recommends that waivers be made valid under the *Act* for all classes of water-based adventure tourism operations and not solely for inflatable hull or non-motorized activities. Unlike the shipping industry, outdoor adventure tourism operations carry an inherent risk factor which many people happily accept in order to enjoy the experience. This inherent risk exists regardless of whether or not passengers engage in the propulsion of the water craft and whether or not the craft is soft hulled or metallic.

Waivers are an important front line defense that insurance providers insist outdoor adventure tourism operators must have – most insurers require the use of a valid waiver as a condition for securing coverage. Indeed, the COTA program provides its clients with an activity specific waiver for free. These important risk management tools serve not only to communicate the risks to the consumer seeking out adventure tourism experiences, but they also act as an important front line of protection against frivolous claims. Without this shield, operators would be vulnerable to increasing insurance claims and in the end, higher insurance costs.

Eliminate the Reverse Onus

COTA recommends that the Act exempt the outdoor adventure tourism sector from the enumerated categories outlined in Schedule 2, Article 3, section 3 of the MLA. Under this, tourism operators are subject to a presumption of fault or negligence if “the death of or personal injury to the passenger or the loss of or damage to cabin luggage arose from or in connection with the shipwreck, collision, stranding, explosion or fire, or defect in the ship.” COTA is opposed to the reverse onus contained in these enumerated categories, as these definitions are not appropriate in an outdoor adventure tourism context, where consumers seek out the inherent risk associated with the activity.

Compulsory Insurance under the MLA Should Not Extend to International Carriage

COTA is on the record as supporting Transport Canada's mandatory insurance requirements being set at \$2 million in liability insurance for lighter vessels carrying 12 or more passengers as it maintains the status quo. Results from a COTA survey of water-based operators in B.C. shows that these businesses already carry \$2 million in coverage.

However, COTA is opposed to setting mandatory insurance requirements for vessels engaged in carriage to and from Canada. Operations such as the Victoria Clipper, a critical connection point between B.C. and the U.S. markets, is facing the same insurance pressures as those in the adventure tourism sector. These transporters of inbound tourism need the flexibility of working with their brokers to get the best possible coverage. COTA will continue monitoring this issue as Transport Canada readies its future decision on whether or not to impose mandatory insurance requirements on international carriage to and from Canada.

On behalf of COTA, I would like to thank you once again for this opportunity to provide feedback. If focused appropriately on the water-based adventure tourism sector, the MLA could be a powerful tool in assisting a great many small- to medium-sized businesses overcome their insurance challenges.

If you have any questions relating to this submission, please do not hesitate to contact me directly at (604) 685-5996.

Best regards,

Will Harding
Policy & Planning Officer

cc: The Honourable Olga Ilich, Minister of Tourism, Sport and the Arts
Jennifer Demers, Tourism Industry Association of Canada
David Littlejohn, Vice-President COTA (marine portfolio)