



International
Chamber of Shipping
Shaping the Future of Shipping

International Chamber of Shipping
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35 Seething Lane
London
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Mr Louis E. Sola
Chairman
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573
United States

**RE: REQUEST FOR COMMENTS CONCERNING ORDER OF INVESTIGATION
INTO TRANSIT CONSTRAINTS AT INTERNATIONAL MARITIME CHOKEPOINTS.
DOCKET ID: FMC-2025-0005**

Dear Mr Sola,

The International Chamber of Shipping (ICS) appreciates the opportunity to provide comments in response to the Federal Maritime Commission (FMC) investigation into transit constraints at key international maritime “chokepoints”.

ICS is the global trade association for commercial shipowners and operators, representing over 80% of the world’s merchant tonnage across all sectors and trades. Our membership comprises national shipowners’ associations from more than 40 countries across the Americas, Asia, Europe and Africa. In the United States, we are represented by our member association, the Chamber of Shipping of America.

ICS has enjoyed Consultative Status with the UN International Maritime Organization (IMO) since 1961 and actively participates in all its committees, including the Maritime Safety Committee (MSC), the Marine Environment Protection Committee (MEPC) and the Legal Committee (LEG). ICS also represents the industry at the IMO Sub-Committee on Navigation, Communications and Search and Rescue (NCSR), which oversees matters related to navigation and communication, including the development of ship routing measures and reporting systems.

The commercial ship operators represented by ICS are major users of the international straits and strategic waterways under review by the FMC and are therefore directly invested in supporting their continued safe and efficient operation as critical arteries of global maritime trade.

Notwithstanding current geopolitical tensions, ICS is not aware that restrictions, impediments or operational constraints in international straits and strategic waterways have increased in recent years, in so far as they apply to commercial shipping (the Red Sea approach to the Suez Canal and Northern Sea Passage excepted). To the extent that constraints may occur at key maritime chokepoints, they are most often attributable to a combination of natural and operational factors, including adverse weather conditions, traffic density and infrastructure limitations.

The primacy of customary international law, UNCLOS and IMO Conventions and other IMO instruments in regulating international straits

ICS wishes to emphasize that the governance of international straits and sea lanes is grounded firmly in customary international law, the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and complementary IMO instruments – a position consistently recognized by the United States and which, in our view, has benefitted the interests of the United States.

The rights of innocent passage, transit passage and freedom of navigation under UNCLOS and customary international law, together with IMO Conventions, technical guidelines and universally applied frameworks, form the agreed global foundation for the safe and lawful movement of ships through international straits.

There are currently 170 States Parties to UNCLOS, which are bound by its rights and obligations, including provisions concerning the rights and duties of coastal States, navigational regimes through straits used for international shipping and the right of innocent passage. Although the United States has not ratified UNCLOS, it has long affirmed the Convention's navigational provisions, particularly under President Reagan's 1983 Ocean Policy Statement, recognizing these as reflective of customary international law. ICS believes that this reality underscores the need of the United States to exercise caution when considering unilateral interpretation or enforcement actions that might be seen to contradict the global legal consensus embodied in UNCLOS.

Relevant IMO Conventions, to which the United States is a State Party following ratification by the Senate, include the International Convention for the Safety of Life at Sea (SOLAS), the Convention on the International Regulations for Preventing Collisions at Sea (COLREG) and the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW). As with most other IMO instruments, these incorporate the principle of "no more favourable treatment," ensuring that ships of all flags are treated equally, and that no ship – regardless of its flag – is disadvantaged due to its flag State's non-ratification of these IMO Conventions.

The United States, under the auspices of the United States Coast Guard, has always played a leading role in the development and implementation of these and other IMO instruments which regulate international straits, providing invaluable technical expertise in discussions at IMO Committee meetings.

Accordingly, ICS strongly recommends that any FMC assessment of transit constraints in international straits and sea lanes carefully considers the robust and well-established international legal framework described above.

Unilateral measures by individual States that diverge from UNCLOS, customary international law or relevant IMO instruments risk undermining the balance of global maritime governance that has facilitated the free and efficient flow of international shipping for over half a century. There is also the concern that this may expose

countries, including the United States, to actions by other States that would act against the free flow of trade and the interests of the United States.

While improvements are always possible, current challenges are best addressed through regional co-operation mechanisms between littoral States with participation by user States, international dialogue and technical capacity-building facilitated by IMO and regional bodies, as well as financial contributions by individual States with a special interest in promoting the smooth flow of maritime trade through these critical maritime chokepoints.

With regard to the particular maritime chokepoints being examined by the FMC:

International Straits and Sea Lanes

English Channel

The English Channel continues to be managed effectively through an IMO-adopted Traffic Separation Scheme (TSS), administered jointly by the French and British authorities. According to the United Kingdom Government, over 400 commercial ships transit the Dover Strait daily.

Strait of Gibraltar

This busy international strait – typically with around 60,000 annual transits – is managed effectively by Morocco and Spain under an IMO-adopted TSS, although transit numbers have temporarily declined due to current security concerns in the Red Sea.

Straits of Malacca and Singapore (SOMS)

Approximately 30% of global maritime trade by volume passes through SOMS, with, according to the Nautical Institute, about 100,000 transits in 2024. The IMO-adopted TSS, mandatory STRAITREP system and oversight by the Tripartite Technical Experts Group (Indonesia, Malaysia, Singapore) maintain navigational safety despite inherent challenges such as congestion and adverse weather.

The *Cooperative Mechanism on Safety and Navigation and Environmental Protection in the Straits of Malacca and Singapore* (the “Cooperative Mechanism”) was established with IMO support in 2007. It includes a Cooperation Forum, a Project Coordination Committee and an Aids to Navigation Fund. The industry, including ICS, regularly participates in relevant meetings. Significant financial contributions from Japan (via the Nippon Foundation), the EU, Norway and other user States have enhanced navigational safety – financial support which the United States might consider replicating given its strategic interest in the region.

With regard to security threats, the *Regional Cooperation Agreement on Combatting Piracy and Armed Robbery against Ships in Asia (ReCAAP)* – of which the United States is one of the 21 contracting State Parties – entered into force in 2006, leading to joint maritime patrols by the littoral States, increased information sharing and capacity building to address maritime security threats more effectively. This has

reduced piracy in the region significantly compared to the 1990s, though incidents of armed robbery persist, especially in remote Indonesian waters.

Northern Sea Passage

In 2024, there were almost 100 commercial international voyages using the Northern Sea Passage, cutting voyage lengths between Europe and north-east Asia, the highest number so far recorded. Before the conflict in Ukraine, there had been a steady increase in the number of destination voyages to Russia from EU/Norway, but that has since decreased.

The Northern Sea Passage runs through waters adjacent to the northern coast of the Russian Federation, including areas under its jurisdiction. The legal and operational framework governing the route is based on national legislation as well as relevant provisions of international law including UNCLOS and applicable IMO instruments.

Russia, as a Party to UNCLOS and key IMO Conventions, is obliged to implement international requirements, including those established by the International Code for Ships Operating in Polar Waters which enhances navigational safety and environmental protection in polar waters including ice-covered waters.

While the Russian Federation has historically regarded development of the northern sea passage as a strategic national priority, ICS recognizes that the Arctic region holds wider international significance. As Arctic ice recedes due to climate change, legal complexities surrounding Article 234 of UNCLOS, which permits coastal States to adopt and enforce non-discriminatory laws within their exclusive economic zone for the prevention of marine pollution in ice-covered areas where exceptional hazards exist, have become a topic for discussion.

The governance and future development of Arctic routes should be underpinned by multilateral engagement, transparency and adherence to international norms. As such, ICS supports addressing these issues under UNCLOS and through IMO. Unilateral applications of Article 234 risk eroding legal clarity and freedom of navigation, and future governance of Arctic routes should be developed collaboratively via global mechanisms rather than through national or regional initiatives.

International Transit through National Canals and Waterways

Unlike international straits and sea lanes governed by the principles of international maritime law, the Panama Canal and the Suez Canal are sovereign waterways under the jurisdiction of Panama and Egypt, respectively. These States administer their canals on a commercial basis, levying non-discriminatory transit fees on vessels irrespective of flag. While distinct from the legal regime governing international straits, both canal authorities, where appropriate, apply relevant provisions of key IMO instruments to ensure navigational safety and environmental protection in alignment with international standards.

Panama Canal

The Panama Canal is a critical artery of global maritime trade, offering a strategic shortcut between the Atlantic and Pacific Oceans. While the Canal faces natural and operational challenges – including periodic congestion and climate-related disruptions due to its reliance on freshwater resources – these challenges are well understood and are being actively managed by the Panama Canal Authority (ACP) in accordance with international best practices.

Transits dropped by 29% in 2024 due to drought-related constraints, but the ACP has responded with adaptive measures, including revised slot allocation, the introduction of a third set of locks and long-term water security initiatives. These challenges are environmental, not policy-driven, and the ACP has demonstrated transparency and good governance in addressing these issues.

ICS maintains a productive relationship with the ACP and is regularly consulted on toll changes and operational developments.

Suez Canal

The Suez Canal is one of the most important maritime trade arteries globally, handling a significant share of international trade. Its narrow structure and single-lane segments present inherent operational challenges, particularly during high-traffic periods. However, these are effectively managed and addressed by the Suez Canal Authority (SCA) which has implemented significant infrastructure improvements in recent years, and the shipping industry, as represented by ICS, is regularly consulted by the SCA on developments, including changes to canal tolls.

Following the 2021 grounding of the containership *Ever Given*, which temporarily halted canal traffic, the SCA accelerated plans to expand and deepen parts of the Canal to increase navigational resilience and reduce the likelihood of future blockages. These upgrades include the widening of the southern section of the Canal and improvements to vessel tracking and management systems.

While transits fell by about 50% in 2024 due to the security crisis in the Red Sea and continuing risk of attack on ships by Houthi militia, the reduction in transits, which is damaging the economy of Egypt, does not reflect any deficiencies in the governance of the canal by the SCA, which continues to uphold safe and efficient passage in accordance with Egypt's legal obligations.

Similarly, environmental concerns such as the transboundary transfer of invasive aquatic species via ballast water, an issue of particular relevance to the United States, are being addressed through the implementation of relevant IMO instruments, including the Ballast Water Management Convention.

Conclusion

ICS underscores that while operational and security risks exist in any international waterway, these do not constitute grounds for unilateral action by individual States. Transit constraints – whether environmental, infrastructural or geopolitical – are being addressed by the responsible littoral States in co-operation with user States, the shipping industry and international institutions, particularly through the legal

framework provided by customary international law of the sea, UNCLOS, IMO instruments and the technical support facilitated by IMO and user States.

We note that remedial measures, which the FMC says it can take, in issuing regulations to address conditions unfavourable to shipping in United States foreign trade might include *“refusing entry to U.S. ports by vessels registered in countries responsible for creating unfavourable conditions”*. As such, ICS would have very serious concerns about any blanket restrictions or prohibitions on the entry of ships into any State’s ports based solely on a ship’s flag State. Such measures, if implemented, would constitute a serious deviation from the foundational principle of non-discriminatory treatment under international maritime law.

It is very important to the global shipping community that regulatory clarity is maintained in this regard, as unwarranted restrictions would have far-reaching consequences for the efficiency and predictability of global maritime trade. The above notwithstanding, we also note that the term *“vessels of a foreign country”*, used in 46 U.S.C. 42101 Section 42101(a), seems unclear, and we are concerned that this might potentially be misinterpreted to apply also to the ship’s country of ownership or the country where the company holding the ship’s IMO ISM Code Document of Compliance is located, which may of course be different to the ship’s flag State.

In view of all of the above, any future assessments or policy decisions stemming from the FMC investigation should remain anchored in respect for established international legal norms and multilateral engagement. Shipping is a global industry requiring global rules and the continued integrity and predictability of global maritime governance depends on adherence to these shared frameworks.

ICS is committed to working with the FMC and other United States government departments in the development of United States’ trade and maritime policy. We remain at your disposal for further clarification of the above and welcome continued dialogue in the spirit of good co-operation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Guy Platten', with a long horizontal line extending to the right below the signature.

Guy Platten
Secretary General