

## TO ALL OWNERS AND MEMBERS

20 January 2017

Dear Sirs

### **International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 and US Ballast Water Management Regulations**

#### **Background**

The IMO's International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (the "Convention") will enter into force on 8 September 2017. The Convention seeks to prevent the spread of harmful aquatic organisms from one region to another, by the establishment of standards and procedures for the management and control of ships' ballast water and sediments.

As of 11 January 2017, there are 54 Contracting States to the Convention representing 53.30% of the world's global tonnage<sup>1</sup>.

The United States (US) is not a State Party to the Convention. Instead the US has its own requirements. In particular, US Coast Guard (USCG) Regulations require the installation on most ships operating and discharging ballast water in US waters of a ballast water management (BWM) system approved by the USCG that meets the USCG's testing standards at the first scheduled dry docking after 1 January 2016. The USCG testing standards have, up until the adoption last year of the *2016 IMO Guidelines for approval of ballast water management systems (G8)*, been considered more robust than IMO Guidelines for the approval of BWM systems. As is noted below, the State of California has its own BWM standards, which will be even stricter than those of the USCG.

The inconsistent nature of the various regulations has caused some confusion in the industry.

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<sup>1</sup> <http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf>

## IMO Ballast Water Management Convention

Under the Convention, all ships engaged on international voyages will be required to manage their ballast water and sediments to a certain standard, according to a ship-specific BWM plan, approved by the Member's Flag Administration. All ships will also have to carry a ballast water record book and an international BWM certificate. The BWM standards will be phased in over a period of time. Eventually, most ships will need to install an on-board ballast water treatment system meeting the IMO's standards by the date of a ship's first renewal of its International Oil Pollution Prevention (IOPP) certificate after the Convention enters into force on 8 September 2017 (as prescribed in IMO Assembly Resolution A.1088 (28)). As an example, a ship that completes her IOPP renewal survey on 7 September 2017 will then have until 7 September 2022 before the ship will be required to fit a type-approved BWM system in order to comply with Regulation D-2 of the Convention.

States Parties to the Convention are given the option to take additional measures which are subject to criteria set out both in the Convention and agreed IMO guidelines. Owners/members should contact their Flag States, if they are States Parties to the Convention, to determine whether any such additional measures will be taken.

Once the Convention enters into force, ships' Ballast Water Record Books must record when ballast water is taken on board, circulated or treated for BWM purposes, and discharged into the sea. It should also record when ballast water is discharged to a reception facility as well as accidental or other exceptional discharges of ballast water.

## IMO Approval of Ballast Water Management Systems

During the Convention development process, considerable efforts were made to formulate appropriate standards for BWM, namely the ballast water exchange standard (the D-1 standard) and the ballast water performance/discharge standard (the D-2 standard). Ships performing ballast water exchange are required to do so with an efficiency of 95 per cent volumetric exchange of ballast water and ships using a BWM system are required to meet the D-2 performance/discharge standard that sets agreed maximum numbers of viable organisms by size per unit of volume that may be discharged in a ships' ballast water when a ship is de-ballasting.

Regulation D-3 of the Convention requires that BWM systems which make use of Active Substances to comply with the Convention shall be approved by IMO in accordance with the *Procedure for approval of ballast water management systems that make use of Active Substances (G9)*. This procedure consists of a two-tier process - Basic and Final Approval - to ensure that the BWM system does not pose an unreasonable risk to the environment, human health, property or resources.

A list of over sixty BWM systems that have either received basic or type approval by the IMO (and in the case of BWM systems which use active substances, final approval) can be found at:

<http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Documents/Table%20of%20BA%20FA%20TA%20updated%20November%202016.pdf>

The IMO has also issued a set of FAQs on their website as follows:

<http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Pages/BWMFAQ.aspx>

The specific requirements for BWM systems are contained in regulation B-3 (Ballast Water Management for Ships) of the Convention which provides that BWM systems used to comply with the Convention must be approved by the Flag Administration taking into account the *Guidelines for approval of ballast water management systems* (G8) (the G8 Guidelines). Further information on these specific requirements can be found at:

[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-\(BWM\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-(BWM).aspx)

The IMO comprehensively revised the above mentioned G8 Guidelines at the MEPC 70 meeting in October 2016, adopting through resolution MEPC.279(70) the *2016 Guidelines for approval of ballast water management systems* (G8) (the 2016 G8 Guidelines). MEPC 70 also agreed that the latest guidelines should be made mandatory and therefore the IMO is currently working on text to revise the 2016 G8 Guidelines so that it can be renamed as the *Code for approval of ballast water management systems*.

Shipowners must now take into account the new requirements for the approval of ballast water management systems. The key date to be considered is 28 October 2020.

- Ballast water management systems installed on or after 28 October 2020 will need to be approved based on resolution MEPC.279(70)
- Ballast water management systems installed before this date may be approved based on either resolution MEPC.174(58) or resolution MEPC.279(70), the latter being the preferred option

MEPC.279(70) defines 'installation' as the contractual date of delivery of the system to the ship or the actual date of delivery to the ship.

This approach was agreed by the IMO through Resolution MEPC.253(67) to protect those owners, considered early movers, that have installed systems approved in accordance with the previously adopted G8 Guidelines prior to the application of the 2016 G8 Guidelines.

Further details on these two sets of Guidelines can be obtained from owners'/members' Flag administrations.

### **USCG Ballast Water Management Regulations (the Regulations)**

The USCG amended its Regulations on BWM in March 2012 by establishing ballast water standards for the allowable concentration of living organisms in ballast water discharged from ships into waters of the US. The requirements that are now in force require commercial seagoing ships operating in US waters - within 12 nautical miles of the baseline - to manage ballast in one of the following ways:

- a US type-approved BWM system to meet the standard;
- temporary use of a foreign type-approved BWM system that has been accepted by the USCG as an alternate management system (AMS) (five year limitation) if installed in compliance with 33 CFR Part 151;
- use and discharge ballast water obtained exclusively from a US public water system;
- discharge of ballast water to a reception facility; and
- no discharge of unmanaged ballast water inside 12 nm.

Although the Regulations have been in force since 2012, until recently there were no USCG type-approved systems. However, on 2 December 2016 the USCG's Marine Safety Centre announced the approval of the first USCG type-approved BWM system: Optimarin's BWM system. On 23 December 2016, the USCG announced its type-approval of two more BWM systems: Alfa Laval Tumba AS's PureBallast 3 and OceanSaver AS's BWTS MKII. All three systems approved by the USCG also have IMO type approval. Thus, shipowners and operators now have three BWM systems options with which they can achieve compliance with both the USCG and IMO's BWM standards.

Owners/members should also note that in conjunction with the type approval certification, the USCG released [Maritime Safety Information Bulletin 14-16](#) which provides useful answers to frequently asked questions concerning:

- the extension program;
- vessel compliance dates; and
- use of Alternate Management Systems.

The Bulletin explains, however, that the US Regulations still allow the USCG to grant an extension to a vessel's compliance date if the master, owner, operator, agent or person in charge (collectively "owner/operator") documents that, despite all efforts, compliance with one of the approved BWM methods, including installation of a USCG type-approved BWM system, is not possible.

Importantly, the USCG have advised that now USCG type-approved BWM systems are available, any owner/operator requesting an extension from the USCG should still be discussing options for installation with the manufacturer(s) of the approved system(s) and must provide an explicit statement, supported by documentary evidence, of the efforts that have been made to comply (e.g. a delay in commercial availability) and explicit reasons for why the installation of a type-approved system is not possible for purposes of compliance with the regulatory implementation schedule. **Any owner wishing to apply for an extension must now use the amended extension application spreadsheet** (click [here](#))<sup>2</sup>. This spreadsheet has recently been modified to ensure that USCG staff can review each application independently. For this reason, batch applications can no longer be accepted and a separate application must be submitted for each ship.

The Bulletin concludes by reminding owners that while this certification provides shipowners and operators with a type-approved system to meet the ballast water discharge standard, vessels can continue to comply with the USCG BWM Regulations by the alternative methods mentioned in this circular.

### **Californian Ballast Water Management Requirements**

Owners/members should also note that the State of California has its own BWM standards, which will be even stricter than those of the USCG. California's "Interim Performance Standards" for BWM systems come into effect on 1 January 2020. Those standards are then set to become even more stringent on 1 January 2030, when California's "Final Performance Standards" are set to come into effect. No BWM systems which meet California's Interim Performance Standards currently exist.

On 30 December 2016, the California State Lands Commission issued a reminder Notice for vessels calling at Californian ports covering the existing reporting requirements relating to BWM. The Notice can be found at [http://www.slc.ca.gov/Forms/MISP/2017\\_LtrAgents.pdf](http://www.slc.ca.gov/Forms/MISP/2017_LtrAgents.pdf)

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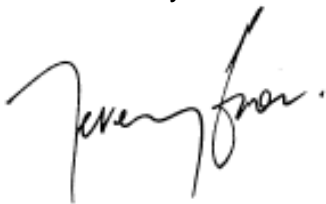
<sup>2</sup> Source: Intertanko

**P&I Club cover**

Neither the Convention nor the USCG Regulations will require amendment of existing club rules. Liabilities (including fines for inadvertently introducing untreated ballast into the environment) arising from the escape or discharge overboard through a “faulty” approved system of untreated ballast or other environmental liabilities related to ballast are capable of being covered, subject always to the rules and any terms and conditions of entry. Cover for other fines relating to a breach of BWM requirements would only be available on a discretionary basis.

All clubs in the International Group will be issuing similar circulars.

Yours faithfully



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