THE JAPAN SHIP OWNERS' MUTUAL PROTECTION & INDEMNITY ASSOCIATION

SPECIAL CIRCULAR

No. 16-019
16 January 2017

To the Members

Dear Sirs,

International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 and US Ballast Water Management (BWM) 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 8th 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 11th January 2017, there are 54 Contracting States to the Convention representing 53.30% of the world's global tonnage[1].

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 BWM system approved by the USCG that meets the USCG's testing standards at the first scheduled dry docking after 1st 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.

IMO BWM 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 8th September 2017 (as prescribed in IMO Assembly Resolution A.1088 (28)). As an example, a ship that completes her IOPP renewal survey on 7th September 2017 may then have until 7th September 2022 before the ship will be required to comply with Regulation D-2 of the Convention and thereby fit a type-approved BWM system.

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. Members should contact their Flag States, if they are States Parties to the Convention, to determine whether any such additional measures will be taken.

[1] http://www.imo.org/en/About/Conventions/StatusOfConventions/Documents/Status%20of%20Treaties.pdf

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). Procedure (G9) 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%20May%202015.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). 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

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 who had already installed before 28th October 2016 a BWM system approved in accordance with the G8 Guidelines current at the time, or who install a BWM system approved in accordance with the previous version of the G8 Guidelines (i.e. approved in accordance with resolution MEPC.174(58) before 28th October 2020, will not be required to replace them with a system that is approved in accordance with the 2016 G8 Guidelines.

Shipowners who install a BWM system between 8th September 2017 and 28th October 2020 can choose to install such a system approved in accordance with either the previous version of the G8

Guidelines i.e. the G8 Guidelines adopted through resolution MEPC.174(58), or the updated 2016 G8 Guidelines.

However, shipowners who install a BWM system after 28th October 2020 will have to install a system approved in accordance with the 2016 G8 Guidelines.

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 Guidelines.

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

USCG BWM 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. Commercial sea going ships operating in US waters – within 12 nautical miles of the baseline, are now required 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 BWMS that has been accepted by the Coast Guard as an alternate management system (AMS) (5-year limitation) if installed in compliance with 33 CFR Part 151;
- Use and discharge ballast water obtained exclusively from a U.S. 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 2nd December 2016, the USCG's Marine Safety Centre announced the approval of the first USCG type approved BWM system, namely Optimarin's BWM system. On 23rd 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 also have IMO type approval. Thus, shipowners and operators now have three BWM systems options pursuant to which they can achieve compliance with both the USCG and IMO's BWM standards.

Members should also note that in conjunction with the type approval certification, the USCG released Marine 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 (AMS).

This 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 that 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 that

wishes to apply for an extension must now use the amended extension application spreadsheet (click here)[2]. This 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 USCG 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 BWM Requirements

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 1st January 2020. Those standards are then set to become even more stringent on 1st 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 30th 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

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 cover, subject always to the Rules and any terms and conditions of cover. 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 have issued similar Circulars.

Yours faithfully,

The Japan Ship Owners' Mutual Protection & Indemnity Association

[2] Source: INTERTANKO