



## SPECIAL CIRCULAR

No. 16-020  
17 February 2017

**To the Members**

Dear Sirs,

### **International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 ("BWM Convention") (No.2)**

Members are referred to our previous circular [No.16-019](#) dated 16 January 2017.

The International Maritime Organization's BWM Convention comes into force on 8 September 2017.

The aim of the BWM Convention is to halt the spread of invasive marine species through ships' ballast water.

The BWM Convention accordingly places obligations upon and provides guidance to contracting states and the ships over which they have authority.

This circular draws Members' attention to the outlines of main provisions of the BWM Convention.

#### **1. GENERAL PROVISIONS**

##### Preliminary Matters

- 1.1. Contracting states are required to give "full and complete effect" to the BWM Convention and its Annex in order to "prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments" (Article 2.1).
- 1.2. Contracting states may enact measures more stringent than those of the BWM Convention, so long as they are consistent with international law (Article 2.3).
- 1.3. No measure taken by a contracting state pursuant to the BWM Convention may damage the environment, human health, property, or resources of either the contracting state in question or of other contracting states (Articles 2.6 - 2.7).

##### Scope and Application

- 1.4. The Convention applies to:
  - a) ships entitled to fly the flag of a contracting state; and
  - b) ships not entitled to do so, but which operate under the authority of a contracting state.
- 1.5. The BWM Convention's survey and certification requirements (see section 3 below) will not be imposed on ships built before 8 September 2017 until the first renewal survey associated with the individual ship's IOPP Certificate to take place after 8 September 2017.

## Enforcement

- 1.6. The BWM Convention obliges contracting states to:
  - a) enforce the requirements and standards relating to ballast water set out in the BWM Convention and in its Annex (Article 4); and to
  - b) enforce the survey and certification requirements contained in the Annex (Article 7)

## **2. BALLAST WATER - REQUIREMENTS, STANDARDS AND PRACTICES**

### Ballast Water Management (“BWM”)

- 2.1. The key BWM requirement is that discharge, unless expressly provided otherwise, should take place by means of BWM only (Regulation A-2.1<sup>1</sup>).
- 2.2. BWM take place through “mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments” (Article 1.3).
- 2.3. The BWM Convention provided for an initial phasing-in period during which the option of ‘ballast water exchange’ was available as an alternative method of disposing of ballast water. **That phasing-in period finished at the end of 2016 and now all ships to which the regulations apply are expected to use BWM (Regulation B-3).**
- 2.4. Alternative methods of dealing with ballast water may be used providing that they are approved in principle by the IMO and that they “ensure at least the same level of protection to the environment, human health, property or resources” that BWM does.
- 2.5. The standard of BWM required is contained in Section D of the Annex. Section D specifies that:
  - a) discharged ballast water must not contain a concentration of organisms and ‘indicator microbes’ which exceeds those specified (Regulation D-2)<sup>2</sup>; and
  - b) any ballast water management system used to comply with the BWM Convention must be state approved, take into account IMO guidelines, and be safe (Regulation D-3).
- 2.6. The requirements in the regulations do not apply where the ballast water is discharged to a reception facility designed to take into account IMO guidelines for such facilities.

### BWM Plan and Record Book

- 2.7. Regulation B-1 requires each ship to have its own specific BWM plan which must, at least,
  - a) detail the ship/crew safety procedures associated with BWM;
  - b) provide a detailed account of how the ballast water requirements and practices will be implemented;
  - c) detail procedures for the disposal of sediments at sea and to shore;
  - d) include procedures for coordinating with relevant state authorities for a discharge at sea;
  - e) designate an on-board officer to ensure the plan is implemented;
  - f) contain the reporting requirements for ships under the BWM Convention; and
  - g) be written in the working language of the ship.
- 2.8. Regulation B-2 states that each ship must have a ballast water record book containing at least the information specified in Appendix II of the BWM Convention which concern the
  - a) uptake of ballast water;
  - b) circulation of ballast water;

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<sup>1</sup> All Regulations are contained within the Annex to the BWM Convention.

<sup>2</sup> These requirements do not apply where the ship is taking part in a state-sanctioned BWM prototype test until 5 years has passed since the date the standard became applicable to the ship.

- c) discharge of ballast water both into the sea and into a reception facility;
  - d) accidental uptake or discharges; and
  - e) any additional procedure or general remarks.
- 2.9. The record book must be maintained for a period of 2 years after the last entry has been made, and kept in the control of the ship's owner or operator for a further 3 years after this (Regulation B-2.2).
- 2.10. The record book may be inspected by officers authorised by a contracting state, and should be readily available for inspection at all reasonable times (Regulation B-2.4).
- 2.11. All ballast water operations must be recorded in the record book without delay (Regulation B-2.5).

### **3. SURVEY AND CERTIFICATION REQUIREMENTS**

#### Surveys

- 3.1. According to Regulation E-1.1 ships of 400 gross tonnage and above to which the BWM Convention applies will be subject to surveys as follows:
- a) Initial Survey - Before the ship is put into service an initial survey will be carried out to verify the BWM plan and ensure that all associated aspects of the ship fully conform to the BWM Convention.
  - b) Renewal Survey – Such surveys will be carried out at intervals not exceeding 5 years as specified by the relevant contracting state. This will ensure that the required BWM standards are still being met.
  - c) Intermediate Survey – This survey will be carried out within 3 months before or after the second anniversary date of the International BWM Certificate (see section 3.6 – 3.10 below), or within 3 months before or after the third anniversary date of the Certificate, and shall be carried out at the same time as an annual survey of the Certificate. The intermediate survey will ensure that the equipment, associated systems, and processes for BWM are in good working order and comply fully with the requirements in the Annex.
  - d) Annual Survey – These will take place within 3 months before or after each anniversary date. They will consist of a general inspection of the BWM plan and on board systems to ensure that they have been maintained and are fit for purpose.
  - e) Additional Surveys – A general or partial survey may be carried out where there is a change, repair, or significant repair performed in order to comply with the Convention. The survey will ensure that the action taken has been made effectively, such that the ship continues to satisfy the Convention.
- 3.2. The owner or operator of the ship must notify the relevant contracting state at the earliest opportunity when an accident occurs or a defect is discovered which substantially alters the ship's ability to meet the requirements of the BWM Convention (Regulation E-1.7).
- 3.3. In addition to the survey requirements, there is a general obligation to maintain a ship such that in all respects it complies with the BWM Convention, and does not present a threat of harm to the environment, human health, property or resources (Regulation E-1.9).
- 3.4. Further, no change (other than a direct replacement) can be made to the BWM systems on the ship without state sanction (Regulation E-1.10).
- 3.5. When a ship is unduly delayed in the course of a survey (or an inspection, pursuant to section 4 below), or owing to an investigation into an alleged violation of the BWM Convention, there is a provision for compensation for any loss or damage suffered (Article 12).

#### Certification

- 3.6. An International Ballast Water Management Certificate is proof that the ship has been surveyed and judged to meet the standards required by the BWM Convention.

- 3.7. A Certificate (in the form contained in Appendix 1 of the Convention) will be issued, or endorsed, upon the successful completion of a survey under the BWM Convention (Regulation E-2).
- a) For ships built on or after 8 September 2017 this will mean that a Certificate is issued at the initial survey.
  - b) For ships built before 8 September 2017, a certificate will be issued at the first renewal survey associated with the ship's IOPP Certificate carried out on or after 8 September 2017.
- 3.8. The issuance or endorsement of a Certificate is the responsibility of the relevant contracting state (Article 7 / Regulations E-2 - E-3).
- 3.9. The Certificate will be issued for a period specified by the relevant contracting state that shall not exceed 5 years (Regulation E-5).
- 3.10. The Certificate issued pursuant to Regulations E-2 or E-3 will cease to be valid if:
- a) the Certificate is not be endorsed when the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with the BWM Convention is changed, replaced or significantly repaired;
  - b) the ship is transferred to the flag of another state;
  - c) the relevant surveys are not completed within the periods specified in the Convention; or
  - d) the Certificate is not properly endorsed.

#### **4. INSPECTION OF SHIPS**

- 4.1. A ship subject to the BWM Convention may be inspected by the officers of any contracting state, in a port or offshore terminal of the contracting state, in order to determine compliance with the BWM Convention (Article 9.1/ Article 10).
- 4.2. Any such inspection must be limited to (Article 9.1(a)-(c)):
- a) verifying that there is a valid Certificate on board the ship;
  - b) inspecting the ballast water record book; and/or
  - c) sampling the ship's ballast water in accordance with IMO guidelines.
- 4.3. A further detailed inspection may be carried out if the ship is not carrying a valid Certificate or there are clear grounds for believing that (Article 9.2(a)-(b)):
- a) the condition of the ship does not comply with the Certificate, or that
  - b) the master/crew are unfamiliar with the BWM procedures or have not implemented them.

#### **5. US COASTGUARD REGULATIONS**

- 5.1. The United States is not a contracting state to the Convention but the United States Coast Guard operates its own system of BWM regulation – the USCG BWM regulations (Title 33, Code of Federal Regulations (CFR) Part 151, Subparts C and D).
- 5.2. The USCG BWM regulations have applied to all non-recreational vessels since January 2016.
- 5.3. The USCG BWM regulations have different requirements from those of the IMO. **Therefore, compliance with the IMO requirements cannot be assumed to be the same as compliance with the USCG BWM regulations.**
- 5.4. Compliance with the USCG BWM regulations can be achieved by:
- a) installing and operating a type approved BWM system (and presently only 3 systems, those developed by Optimarin, Alfa Laval Tumba AB and OceanSaver AS, have approval);
  - b) temporarily using an alternative management system (AMS – see 5.5 below);

- c) using ballast water taken exclusively from a US public water system;
  - d) discharging ballast water into a reception facility; or by
  - e) not discharging unmanaged ballast water within 12 nautical miles of the US.
- 5.5. If an AMS is to be used it must have been installed before the ship was required to satisfy the ballast water discharge standard under the USCG BWM regulations.
- a) Once a ship with a pre-installed AMS on board becomes required to meet the ballast water discharge standard, it will have 5 years in which to become compliant (33 CFR 151.1512(b) or 151.2035(b)).
  - b) The time period for compliance may be extended through an application to the USCG showing that despite all efforts, the ship is not able to comply with the BWM requirements.
- 5.6. The USCG is able to extend a ship's compliance date if the owner or operator can show that despite all efforts, compliance is not possible. The previous lack of a type-approved BWM system meant that many ships obtained such extensions. Now that there are type-approved systems (listed at 5.4(a) above), and the USCG will be approving more in the future, any such application must now be supported by documentary evidence that installation of the type-approved system is not possible for compliance purposes.

## **6. CONCLUSIONS**

- 6.1. Compliance with USCG BWM regulations has been required since 1 January 2016.
- 6.2. Compliance with the BWM Convention will be required from 8 September 2017.
- 6.3. Compliance means, as a minimum:
- a) Installing an approved BWM system;
  - b) Maintaining and implementing a BWM plan and record book;
  - c) Submitting to the BWM survey regime; and
  - d) Ensuring possession of a Certificate.

Yours faithfully,

**The Japan Ship Owners' Mutual Protection & Indemnity Association**