



# CHAMBER OF SHIPPING OF AMERICA

## MONTHLY REPORT FOR BIMCO

March 2018

**NOTE TO THE READER:** Reference to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. Please note new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <http://thomas.loc.gov/> by entering the bill number (HR 802, S 2841) in the "search bill text" block found at the center of the page.

### **USCG Navigation and Inspection Circular (NVIC) 01-18 Ballast Water Management for Control of Non-Indigenous Species in Waters of the United States**

The USCG issued the above referenced NVIC on 1 March 2018 and replaces the old NVIC 07-04 issued in 2004. The purpose of this newly published NVIC is to advise the marine industry and USCG port state control personnel as to requirements to effect compliance with US regulations. The preamble notes that any questions relating to ballast water management compliance should be directed to the Captain of the Port (COTP) or the Office in Charge of Marine Inspection (OCMI) in the local port in which a vessel is bound or located. The NVIC contains three (3) enclosures consisting of (1) reporting, recordkeeping, compliance and enforcement guidance (2) list of acronyms and (3) a list of USCG websites and emails relevant to ballast water management issues. The following are short summaries of each section of enclosure (1).

**Section A. Applicability.** The NVIC applies to non-recreational vessels of all flags within waters of the United States. Also contained in this section are definitions and clarifying points related to alternate management systems (AMS), ballast tank, ballast water and other relevant definitions. Several points in these definitions are worth noting as follows:

- An installed and fully functional AMS may be used as a compliance method both before and after the vessel's compliance date providing its use is within the 5 year period after the vessel's compliance date.
- If the AMS fails before the vessel's compliance date, the vessel may use any other allowable compliance method, including ballast water exchange. If the AMS fails after the vessel's compliance date and can't be repaired, the vessel may use any other allowable compliance method; however, if the vessel wishes to use ballast water exchange, it must be approved by the USCG District Commander or the COTP.



## CHAMBER OF SHIPPING OF AMERICA

- Technical water tanks containing potable or non-potable water are NOT ballast tanks providing they are not connected to the ballast system and not used for the adjustment of trim, draft, or stability.
- Note Table 1 at page 7 of enclosure (1) listing specific exemptions for types of vessels and trades routes and applicability of the management, reporting and recordkeeping provisions across these exemptions.

Section B. BWM Reporting Guidance. This section contains detailed reporting requirements as required by the regulation with relevant notes as follows:

- Vessels operating exclusively within a single COTP need only submit an annual report of BWM practices.
- In general, vessels inbound to the US must submit a report to the National Ballast Information Clearinghouse (NBIC) generally within 6 hours of arrival in the US port.
- Note 24 hour prior to arrival Montreal reporting requirements which apply to vessels bound for the Great Lakes from the high seas; however submission of the St. Lawrence Seaway BW reporting form is a suitable alternative.
- Note 24 hour prior arrival reporting requirement for vessels bound for destinations on the Hudson River above the George Washington Bridge.
- Contents of the report are found at paragraph f at page 9 of enclosure (1).
- If information as reported changes, an amended report must be submitted no later than 24 hours after departure from the subject port.
- Alternative/equivalent reporting methods are provided for at page 10, enclosure (1) as are streamlined methods for submission which permits batch reporting on a monthly basis.

Section C. BWM Recordkeeping. This section provides details of recordkeeping which apply not only to ballast water management activities, but also to discharge of sediment

Section D. Compliance Guidance. This section is the real core of BWM requirements and the USCG's current interpretation of the regulations in practical terms. Specific requirements are summarized in 8 specific subsections as follows:

1) BWM Requirements

- 4 methods of compliance are listed (use of BWMS approved by USCG, water from a US public water system (PWS), 200 nm from shore for vessels prior to their compliance date, discharge ashore or no discharge of BW).
- Note that vessels past their compliance date are not permitted to use BWE as a general matter and may only do so on a case by case basis as approved by local USCG authorities.



## CHAMBER OF SHIPPING OF AMERICA

### 2) USCG Type-Approved BWMS

- Approved systems to be listed on USCGMIX system
- Systems with completed submissions to USCG for review are also listed as "pending"

### 3) Alternate Management Systems (AMS)

- 5 year grace period (from vessel's compliance date) is applicable only to those vessel's that installed before their compliance date or the USCG has determined no USCG type approved systems are suitable for use on that vessel at the time of AMS installation
- If during the 5 year period, the AMS becomes non-functional and unable to be repaired and a USCG type approved system is available, the non-functional AMS may not be replaced with another AMS. Under these circumstances, the vessel must either install a USCG type approved system, replace the AMS with the same AMS (same ID and model) or chose another approved management method
- In all scenarios, the vessel owner is highly recommended to contact the USCG and discuss its unique situation in detail to assure the compliance status of its proposed compliance plan

### 4) Discharge of BW in Extraordinary Circumstances

- 4 specific circumstances are detailed in this section including (1) BWE as an option for vessels operating in the Great Lakes and Hudson River (2) BWE no longer an option for a vessel operating in the Great Lakes and Hudson River (3) vessels not operating in the Great Lakes and Hudson River and which have not reached their compliance date and (4) BWMS stops operating properly or the BWM method is unexpectedly available
- Vessel owners are suggested to identify which of these four circumstances apply to the vessel in question, and review the details and clarifications provided in this section
- In the 4<sup>th</sup> circumstance, it should be noted that the inoperability should be reported as soon as the inoperability is identified to the nearest USCG office (COTP/District Commander) and should also report this inoperability to the USCG office in the US port to which the vessel is bound
- A BWMS unavailable on a previous voyage is not considered "unexpectedly unavailable" on the next voyage
- Lack of onboard inventory of expendable materials used for proper operation of the BWMS is not considered "unexpectedly unavailable" e.g. vessel's will be expected to carry sufficient inventory for proper operation of their BWMS

### 5) Shipboard Technology Evaluation Program (STEP)



## CHAMBER OF SHIPPING OF AMERICA

- Originally implemented by NVIC 01-04 (available on USCG NVIC website)
- Goal to facilitate the development of effective ballast water management technologies
- Vessel must be enrolled in STEP program and may continue to use the BWMS as its compliance method

### 6) Extension Requests

- as more US type approvals come on line, it is becoming increasingly more difficult to receive an extension
- each extension application must include comprehensive documentation as to why the particular vessel cannot use or install one of the existing US type approved systems “despite all efforts”
- grounds for an extension include vessels with installed BWMS systems which are expected to receive US type approval (e.g. testing/application in process); however, if the system does not receive US type approval, the system must be replaced with a US type approved system
- vessels with and AMS or vessels expected to install an AMS are NOT eligible for an extension
- extensions will be granted no longer than the minimum time needed for compliance and may not be linked with the vessel’s next scheduled dry dock e.g. vessel may need to enter drydock “off schedule” for BWMS installation
- extension requests must be received by USCG at least 12 months prior to a vessel’s compliance date

### 7) BWM Plan

- Must be specific to vessel
- Include compliance and contingency planning and means to assure crew is properly trained
- Include communication procedures with USCG local offices e.g. District Commander and/or COTP

### 8) Compliance Verification

- Part of routine port state control inspections on non-US flag vessels, inspections for certifications on US flag vessels, or at any other time there is reason to believe vessel is not in compliance with the US regulations
- Inspection will include identification of BWM method, verification that BWM plan is onboard and contains all necessary components, assessment of crew’s familiarity with BWM procedures relative to position, visual inspection regarding biofouling including visible hull, anchor chain and anchor, verification of compliance status of BWMS installed e.g. US type approved, AMS, STEP, all required documentation including extension, recordkeeping and reporting documents



## CHAMBER OF SHIPPING OF AMERICA

- If the vessel is discharging ballast water at the time of inspection, the inspector will assess proper operation of the BWMS, verification that the discharge is compliant (may imply sampling with indicative devices or samples sent to lab for full analysis)

Section E. Enforcement. Provides details of enforcement options and procedures where non-compliance issues are noted. Note ranging actions (from least severe to most severe) from education of vessel owners/operators/crews through issuance of COTP orders, letters of warning (LOW), notices of violation (NOVs), suspension and revocation (S&R) actions against one holding a USCG merchant mariner credential, revocation of clearance and customs holds and criminal proceedings.

### **Port Everglades Tariff Prohibiting Ballast Water Discharge**

The Port Everglades Tariff (Link: [PORT EVERGLADES TARIFF NO. 12](#)) see Item No. 1015, prohibits the discharge of ballast water in the Port. This obviously has a significant impact on vessels operating there. Though this tariff has been in force since 2006, many ship operators and owners were unaware of its existence until March of this year. Research showed the tariff was not communicated publically to the industry. Communication lines between various sectors of the industry including CSA members with high level port officials are open. Our hope is for this situation to be resolved by the Port aligning with USCG regulations and the Vessel General Permit rather than prohibiting ballast discharge, even treated ballast, all together. We will continue to be involved in this issue and update members as new information is available.

### **USCG Increases Marine Casualty Reporting Property Damage Thresholds**

The Coast Guard published the Final Rule in the Federal Register updating the monetary property damage threshold amounts for reporting a marine casualty and a Serious Marine Incident.

The reportable marine casualty property damage threshold amount changed from \$25,000 to \$75,000 (increased from \$72,000 in NPRM). and the SMI property damage threshold from \$100,000 to \$200,000.

Full text of the FR Notice: [FR Vol 83 No 53 - USCG Marine Casualty Thresholds](#)

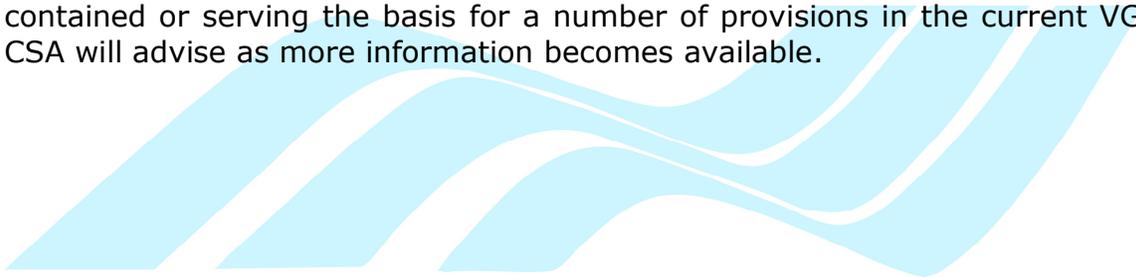


## CHAMBER OF SHIPPING OF AMERICA

### **EPA VGP Status**

CSA has engaged in discussions with senior EPA officials in the EPA Office of Water in order to express our concerns associated with the delayed publication of the proposed Vessel General Permit (VGP). As previously discussed, the new VGP will be effective the middle of December 2018 and industry urgently needs to prepare for implementation of the new VGP particularly as regards any additional requirements which may be included. Given the expected and desired 60 day comment period and at least an equal time for EPA to review and respond to these comments, the current delays in publication may well mean that the final permit is not published before September/October 2018 if not later.

On a positive note, given the current program of regulatory reform originating from the White House, it may be expected that few changes will be embodied in the new permit although it should also be noted that EPA must respond to a recent court case decision which held that EPA had not sufficiently justified scientifically a variety of performance standards and water quality criteria either contained or serving the basis for a number of provisions in the current VGP. CSA will advise as more information becomes available.



## CHAMBER OF SHIPPING OF AMERICA