

SHIPPING INDUSTRY BALLAST WATER COALITION

Industry Stakeholders Promoting Safe & Effective Ballast Water Management

September 28, 2001

Docket Management Facility
U.S. Department of Transportation
Room PL-401
400 Seventh Street, SW
Washington, DC 20590-0001

Re: Docket No. USCG 2001-10062 -- The National Ballast Water Management Program
(66 *Federal Register* 36358-36360, July 11, 2001)

Dear Sir or Madam:

The undersigned members of the Shipping Industry Ballast Water Coalition respectfully submit the following comments in response to the July 11, 2001 Notice of Meetings and Request for Comments. The Coalition represents the overwhelming majority of vessels, both U.S. and foreign, participating in all U.S. trades, and the U.S. ports at which these vessels call. We continue to support the creation of a comprehensive, mandatory national ballast water management program, as documented in separate comments to the dockets concerning "Potential Approaches to Setting Ballast Water Treatment Standards" and "Approval for Experimental Shipboard Installations of Ballast Water Treatment Systems" and are pleased to submit these comments in furtherance of that goal. The comments below are formatted to address general provisions we believe must be taken into account in establishing the mandatory national ballast water management (BWM) program, followed by our responses to the specific questions posed in the *Federal Register* notice referenced above.

General Provisions

While the prior requests for comments addressed the more technical issues relating to the setting of a performance standard and establishment of shipboard testing programs, we view the focus of this notice and questions posed as oriented towards implementation and enforcement. This differentiation is critical in that it highlights the absolute need to develop both a performance standard and a specific process by which alternative ballast water treatment (BWT) technologies or management practices may be tested against such a standard for practical shipboard application and approved as acceptable BWT technologies or management practices.

The Ballast Water Coalition commends the Coast Guard for having initiated this critical process. Currently, ballast water exchange (BWE) is the only management method generally available to the shipping industry. While this situation is not likely to change in the foreseeable

future, it is generally recognized that for safety and other reasons BWE may not, in certain situations and for certain types of vessels, be a practicable or readily available solution to address the important issue of transfer of nonindigenous species via discharged ballast water. Thus, there is also broad agreement on the need to develop and test alternative BWM methods and technologies.

As we emphasized in our March 27, 2001 petition to the Coast Guard to develop a mandatory national BWM program, the development of a toolbox of management options, comprising the use of BWE, alternative BWT methods and management practices, would comprehensively address BWM issues on the wide variety of vessel types calling at U.S. ports. The mandatory program would, for all vessels in U.S. waters, require the creation of a ballast water management plan specific to the individual vessel, record keeping requirements relative to ballast water operations and adequate training of the ship's crew to ensure compliance with the provisions of the ballast water management plan. Initially, the program would, again for all vessels in U.S. waters, require implementation of best management practices as incorporated in the current voluntary guidelines (33 CFR Part 151, Subpart D, § 151.2035 (a)). The program would integrate specific BWM practices, including BWE as well as alternate BWT technologies and management practices after these have been tested aboard ship and ultimately approved by the U.S. Coast Guard. Under this scenario, a vessel could install any of the approved treatment technologies, implement approved management practices or undertake ballast water exchange in order to meet the requirements of the program, taking into account the unique aspects of the vessel's operations and design. This will allow for an informed decision as to whether ballast water exchange or one of the approved alternate BWT technologies or management practices is best suited for a particular vessel, taking into account voyage characteristics, retrofitability aboard the vessel and the relative effectiveness of the technology or management practice as it relates to the reduction of nonindigenous species in ballast water.

Furthermore, the Coalition deems it critical that U.S. requirements under a mandatory, national ballast water program parallel those under development at the IMO and as such, every effort should be made to ensure consistency between the international and federal requirements.

1. Should BWM (including mid-ocean exchange of ballast water) be mandatory?

Yes. A BWM program should be made mandatory for all vessels carrying ballast on designated voyages. However, under the National Invasive Species Act (NISA; Pub.L. 104-332) the Coast Guard has the task to determine whether environmentally sound alternative BWT methods or management practices are at least as effective as BWE. The agency's concurrent initiative to establish a program for the experimental testing of such systems is an obviously important part of that effort. The challenge that the government, the industry and others face is that in order to accomplish NISA's mandate of approving alternative BWT methods or management practices that are at least as effective as BWE, we need to know the standard that will be applied to determine whether a technology or management practice being tested is successful or not. This is a substantial issue with clear implications for both the question of how to devise an approval program for experimental shipboard installations and for the calibration

and phasing-in of the mandatory national BWM program itself. Without knowing the standard that should define effective BWT or management practices, it is difficult, if not impossible, for technology developers and owners and operators of vessels to know which objectives a proposed technology or management practice would have to meet in order to be approved as an acceptable BWT technology in accordance with NISA's requirements.

In other words, a viable and realistic mandatory national BWM program that comprehensively can address BWM issues on the wide variety of vessel types calling at U.S. ports requires the development of a toolbox of management options which again is dependent on the development of a performance standard. The Ballast Water Coalition reiterates its willingness and readiness to assist the Coast Guard in meeting both of these critical objectives.

Initial mandatory requirements for all vessels in U.S. waters should incorporate the current voluntary guidelines in 33 CFR Part 151, subpart D, § 151.2035(a) and enumerated in the USCG Ballast Water Brochure. They should include avoidance of ballast operations in or near marine sanctuaries, marine preserves, marine parks, or coral reefs; avoidance of taking on ballast water with harmful organisms and pathogens, such as toxic algal blooms; near sewage outfalls; near dredging operations, where tidal flushing is poor or when a tidal stream is known to be more turbid; in darkness when organisms may rise up in the water column and in shallow water or where propellers may stir up the sediment; cleaning of ballast tanks regularly; discharging of minimal amounts of ballast water in coastal and internal waters; rinsing of anchors and anchor chains during retrieval to remove organisms and sediments at their place of origin; removal of fouling organisms from hull, piping, and tanks on a regular basis and disposal in accordance with local, State and Federal regulations. Every vessel in U.S. waters should also be required to develop and maintain a vessel specific ballast water management plan and to train vessel personnel in ballast water and sediment management and treatment procedures.

Our preferred solution to the question of whether mid-ocean exchange should be mandatory is the promulgation of regulations under which vessels that have incorporated, or can incorporate, ballast water exchange into their operating procedures, subject to the safety exemption, would be compliant. Pursuant to such regulations and using its authority under NISA (16 U.S.C. § 4711 (c)(H)) to take into consideration vessel types, different operating characteristics and other pertinent factors, the Coast Guard should also establish a process to grant initial compliance status, pending the approval of alternative BWT methods or management practices, to vessels that satisfactorily document that they for structural, design, operational or other relevant reasons can not undertake ballast water exchange, provided such vessels implement the other elements of the initial mandatory national BWM program described immediately above. Such initial compliance status should also be granted to vessels that document that their transits are of such short duration or in a location that ballast water exchange is not a practical solution due to lack of time in a sea area meeting the definition of mid-ocean exchange, i.e. more than 200 nautical miles from any country's coastline or in waters of a specific depth.

An alternative, but less desirable, solution to the industry and the marine environment is to not require ballast water exchange until a performance standard and experimental shipboard testing program is finalized and sufficient time is provided to permit vessel owners to make an informed choice as to whether exchange or an alternate technology or management practice tested under the program is appropriate for a particular ship taking into account vessel design and voyage characteristics. This approach would recognize the operational and effectiveness issues currently associated with the various BWM methods, and the present lack of a performance standard by which treatment technologies or management practices may be evaluated. It would also recognize that a mandatory program which would require exchange without consideration of the operational flexibility exemptions discussed in the paragraph above or before the finalization of a performance standard and shipboard testing program would be neither desirable nor practical, since it would be virtually impossible for vessels on short duration voyages or on transits which did not take them outside the EEZ of any country for sufficient duration to comply with the requirements. Such a mandatory program would also stifle much of the incentive for shipboard testing of developing treatment technologies or management practices.

2. Should an exemption be allowed for those situations, where a ship's master believes that performing BWM, including exchange, would endanger his vessel, crew and/or passengers? If so, how should the validity of such exemptions be verified?

In accordance with existing statutory language, a safety exemption should be absolutely allowed for those situations, regardless of the BWM method, where the master, acting in good faith, believes the procedure would endanger his vessel, crew and/or passengers. This exemption is no different than any other operational situation that, in the master's opinion, endangers his ship, crew and/or passengers and requires a particular course of action to maximize the safety of the vessel and persons aboard. The master must be free to make a command decision in the best interests of the vessel, crew and passengers, taking into account all aspects of the vessel's operating characteristics and external forces, such as weather, without having to worry about compliance issues.

In response to the second question, we note that NISA provides -- in situations where the same vessel repeatedly invokes the safety exemption not to undertake BWE or an alternative BWT method or management practice -- for the U.S. Coast Guard, as part of its general law enforcement and port state control authority, to request documentation from weather maps, log books and similar sources to verify that the master of the vessel has indeed acted in good faith. This authority is expressly mandated in 33 CFR Part 151, Subpart D, § 151.2050. Furthermore, with a mandatory requirement to develop and maintain vessel specific ballast water management plans, which should be designed to define the safety limits of the BWM system installed aboard the vessel, both in terms of vessel stability and other operating characteristics as well as crew safety if on-deck work is required to operate the BWM system, it would be relatively easy for the Coast Guard to determine whether logged conditions confirm a situation that places the vessel outside this safe operating envelope or could place it in such a position when considering the time necessary to conduct the BWM method, justifying an exemption.

- 3. Should there be an exemption from ballast water exchange requirements for those voyages whose routes take them outside the U.S. EEZ but not into waters of at least 2000 meters in depth and 200 miles from land (the prescribed depth of water and distance from land for conducting a mid-ocean exchange)?**
- 4. Should the depth of water required for mid-ocean exchange be reduced to 500 meters, as is contained in the International Maritime Organization's definition of mid-ocean exchange?**
- 5. Should ballast water exchange be permitted in waters less than 200 miles from shore? If so, what parameters should be considered?**

The Coalition wishes to address the above questions collectively as we believe they are all related to the same basic question as to where an "effective" mid-ocean exchange can be conducted. It should be recalled that NISA establishes the 200 mile criteria as well as allowing for the establishment of alternative exchange zones where appropriate; the statute does not, however, prescribe a specific water depth. We believe the existing criteria should be retained in the mandatory national ballast water management program.

We also believe that a lesser depth in accordance with the IMO's guidelines would be appropriate, and consequently encourage the Coast Guard to revisit its earlier proposal -- made as part of the rulemaking process that resulted in the Interim Final Rule on the implementation of NISA, dated May 17, 1999 -- to change the minimum depth requirement from 2,000 meters to 500 meters. Such a change would, under the requested mandatory national BWM program, expand the area for conducting BWE and thus provide the individual vessel and its master more time and options on when and where to undertake BWE.

We further believe that lesser distances offshore could be implemented using the alternative exchange zone concept included in NISA. Where conditions are such that an exchange conducted in lesser distances offshore will result in the same effectiveness as one occurring 200 miles off, an alternative exchange zone should be designated, taking into account a number of interrelated factors including hydrographic and other local/regional conditions e.g. currents, water temperature, salinity.

Reducing the depth requirement to 500 meters and identifying alternative exchange zones within the EEZ would provide greater opportunity for vessels to undertake a compliant exchange and reduce the operating scenarios where a vessel's route and/or transit duration or safety considerations would prevent conduct of a compliant exchange. Three particular operating scenarios are of note here. One relates to a coastwise transit where the most fuel and/or operationally efficient route of the vessel takes it outside the EEZ for a period less than that necessary to conduct a ballast water exchange. An example of this scenario is a voyage from the US Gulf Coast to the US East Coast where the vessel track is outside the US EEZ for a period of only two or three hours and thus of less duration than the time necessary to conduct an exchange. The second scenario relates to a voyage, which may be of sufficient total duration to undertake

an exchange, but the vessel track does not take it onto the high seas, i.e. at least 200 nautical miles from **any** country's coastline, for sufficient time to conduct an exchange. An example of voyages falling into this category includes voyages from ports in Mexico and the Caribbean to US Gulf and East Coast ports. While reducing the depth requirement and identifying alternative exchange zones would not eliminate these scenarios, it would reduce the instances where vessel transit characteristics would require an exemption from exchange requirements. Third, a Master -- due to weather and sea state -- may determine that safety considerations rule out exchange. Reduced depth requirements and alternate exchange zones could enhance compliance where, otherwise, vessel safety might make exchange impossible.

6. Should the Coast Guard wait for the development of a BWT standard (a means of measuring the effectiveness of and comparing various ballast water treatments) before implementing mandatory BWM regulations?

No. The Coast Guard can and should implement mandatory BWM requirements similar to those enumerated in our answer to Question 1 above and as further explained in our petition to the Coast Guard for a comprehensive mandatory national BWM program, dated March 27, 2001.

7. Should ship type (e.g. passenger, container, bulk) influence regulatory requirements on BWM, and if so, how?

No, ship type, as defined by cargo type carried, should not influence regulatory requirements on BWM because ship type, as defined by cargo carried, has no correlation with the risk associated with ballast water discharge. Ship type, as defined by cargo carried, will become a factor after the establishment of a BWM standard and the approval of alternative BWT methods or management practices in the owner's evaluation of various BWM options that may be more or less adaptable to a particular ship type (e.g. volumes, flow rates, purpose for which ballast water is loaded/discharged which include immersion, stability and/or trim) as well as trade routes, transit times and other operational considerations.

8. If BWM becomes mandatory, should ships constructed before the establishment of a mandatory program be treated differently than those constructed after the program goes into effect? If so, what should the distinctions be?

Any mandatory BWM requirements should take into account the issue of new versus existing ships, whether it is before any program becomes mandatory or later when the performance standard may be reviewed. At program inception, the performance standard, using BWE as its benchmark, should be applied to all vessels in existence at the implementation date. As the program moves forward in time and the performance standard is reviewed, new vessels would be required to meet the performance standard in effect at the time of construction.

9. If a mandatory BWM program is developed, should the mandatory reporting requirement still be in effect? If so, what is the most efficient means of obtaining BWM data from vessels? Should BWM information be part of the advance notice of arrivals

currently required of vessels arriving in U.S. ports and submitted to the appropriate CG Captain of the Port, even if this meant providing significantly more information in the advance notice of arrival than is currently required? Or should separate reports continue to be sent to the National Ballast Water Information Clearinghouse, which acts as the CG's agent for the collection, storage and further processing of these reports?

Once a mandatory national BWM program has been implemented, compliance should be determined through inspections, sampling and similar compliance measures, and the reporting requirements should consequently be terminated.

Already today, vessels entering U.S. waters from beyond the EEZ are required to keep written records of their BWM practices. We propose that this requirement -- as part of the requested mandatory national BWM program -- be broadened to include all vessels in U.S. waters, which can be done administratively using the authority in existing NISA (16 U.S.C. § 4711 (c), subsection F).

Also, as pointed out in our response to the second part of question 2, the Coast Guard already has statutory authority to take appropriate actions, including sampling of ballast water tanks and examination of documents, to assess compliance with the mandatory record keeping requirements and the current voluntary BWM guidelines. Because NISA expressly authorizes the promulgation of mandatory BWM requirements to replace the voluntary guidelines, the existing authority to verify compliance would also pertain to such future mandatory BWM requirements.

10. Should ballast water management requirements (including reporting and treatment) be extended to cover coastwise shipping that operates well within the EEZ? What kinds of BWM should coastwise shipping be required to practice?

As mentioned immediately above, the Ballast Water Coalition proposes that the record keeping requirements for vessels entering U.S. waters from beyond the EEZ be broadened -- as part of the proposed mandatory national BWM program -- to include all vessels in U.S. waters.

Furthermore, we propose that -- as part of the mandatory national BWM program -- all vessels, including coastwise shipping, should be required to implement the requirements detailed in Question 1 above, including the requirement to develop and maintain a vessel specific Ballast Water Management Plan. However, in accordance with existing law and regulations, which require treatment of ballast water taken in waters less than 2,000 meters deep and within 200 miles from any foreign shore that could be discharged into U.S. waters (33 CFR Part 151, Subpart D, § 151.2020), coastwise shipping should not be requested to meet specific treatment requirements.

11. Should there be an exemption from ballast water exchange requirements for those voyages where the vessel is only outside the U.S. EEZ for a minimal length of time? What length of time should be considered minimal?

The Ballast Water Coalition notes that the existing statute, as implemented in 33 CFR 151 Subpart D § 151.2005 (b), provides that the current voluntary BWE requirement pertains to “all vessels, U.S. and foreign, carrying ballast water into the waters of the United States after operating beyond the exclusive economic zone except those exempted in [33 CFR 151 Subpart D] §§ 151.2010 and 151.2015” (64.Fed.Reg. 26682). We also note that the Coast Guard - as part of the rulemaking process in 1999 – considered a proposal to exempt vessels from the BWE requirements if they had only operated a limited time outside the EEZ, and “determined that this is contrary to the intent of [NISA]” (64.Fed.Reg. 26676).

Thus, the time spent outside the EEZ should probably not be the sole criteria to use. However, consistent with the emphasis in the supplementary information to the Coast Guard’s May 17, 1999, rulemaking on whether, where and when any ballast water was taken up (64 Fed.Reg. 26676), if a vessel is engaged on a coastwise voyage between two U.S. ports, travels outside the EEZ because it is operationally and/or fuel efficient **and** takes no ballast water in waters less than 2,000 meters deep and within 200 miles from any foreign shore, we see no reason not to provide an exemption. Relative to the scenarios in the responses to Questions 4, 5 and 6 above, if an exemption is not provided in e.g. the US Gulf Coast to US East Coast situation, it can lead to vessels burning unnecessary fuel by traveling a larger distance just to stay within the EEZ.

In addition to our response to these questions, we would like to make one final point. With regard to the upcoming report that the U.S. Coast Guard is to transmit to the U.S. Congress via the Secretary of Transportation, we would urge that a draft of this report be subjected to a public comment period prior to transmission to the Secretary and subsequently to Congress. We appreciate the enormity of the task taken on by the Coast Guard both to collect ballast water data with the assistance of the Smithsonian Environmental Research Center’s National Ballast Water Clearinghouse and to consolidate and analyze the data. We strongly believe, however, that this data and the recommendations made by the Coast Guard to Congress on the basis of the data, should be subject to review by all interested stakeholders so that they would have the opportunity to comment on its reliability and validity.

We thank you for the opportunity to comment on these important issues and would be pleased to provide additional information or clarification upon request.

Sincerely,

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