Ballast Water Management

U.S. Perspective and Latest Developments
The Underlying Issue

- Illegal immigration!
General Considerations for Shipowners

• The United States is not a Party to the IMO Convention.

• The testing protocols provided by the IMO and the USCG are different.

• A ballast water management systems can be approved under the IMO’s protocols but not satisfy the more stringent USCG’s protocol.

• Economic consideration for Shipowners that are trying to comply with both IMO and USCG standards.
US Regulations – Deadlines to Comply

• The United States is not a Party to the IMO Convention and the compliance deadlines are different.

Under US Regulation (33 CFR 151):

• New vessels built on or after December 1, 2013 need to be in compliance upon delivery;

• For vessels built before December 1, 2013, shipowners need to make sure that vessels are in compliance with the regulation - or obtain an extension by the U.S. Coast Guard - by the first dry-docking after January 1, 2014 or January 1, 2016, depending on the ballast water capacity of the vessel. (Ballast water capacity of less than 1500 m³ and greater than 5000 m³ - 1/1/2016 – Ballast Water Capacity between 1500 and 5000 m³ - 1/1/2014)
Compliance Options

Vessels operating in the waters of the United States past those dates have the following options to be in compliance:

• use one of the five Coast Guard-approved ballast water management system (BWMS);
• use only water from a U.S. public water system;
• do not discharge BW into waters of the United States (includes the territorial sea as extended to 12 nautical miles from the baseline); or
• discharge to a facility onshore or to another vessel for purposes of treatment.
Temporary Compliance Options

• Use an Alternate Management System (AMS). A System that is approved under the IMO protocol and that has been authorized by the US Coast Guard. [at least 60 available - only valid for 5-years from compliance date];

• Apply to the US Coast Guard for a Letter of Extension of the Vessel Compliance Date;
USCG Extension Program

• We are now in a post type approval phase.

• The Coast Guard issued the Marine Safety Information Bulletin on March 6, 2017 addressing the extension program following the availability of Coast Guard Approved Ballast Water Management Systems.

• Now that there are five Ballast Water Management Systems approved by the US Coast Guard, it is more difficult to get an extension.

• The Shipowner will need to provide the Coast Guard with the reason why one of the compliance options, including the installation of a Coast Guard approved ballast water management system, is not possible.

• The timing to request an extension is no longer aligned with the scheduled dry-docking dates of a vessel and decisions are issued based on the information provided in the request for extension.
USCG Extension Program

If an extension is granted the shipowner will have:

- 6 month to conduct an analysis of the ballast water management system and;
- 30 months to comply with the installation plan.
- Extensions granted after March 6, 2017 will be the final extension to the vessel compliance date.
USCG Extension Program – Considered Factors

Some of the factors that the Coast Guard will consider before granting the extensions:

- Lead time for the purchase contract of the ballast water management system and its installation;
- Manufacturing capabilities and shipyard capacity;
USCG Extension Program

- The extension applications are evaluated on a vessel by vessel basis. It is not possible to request an extension for the entire fleet.

- Prior to January 2017 the US Cost Guard received 13,000 request for extensions and accepted over 12,000.

- Following the availability of US Coast Guard approved BWMS, requests for extensions have recently been denied. The unavailability alone of US Coast Guard approved BMS is no longer ground for an extension

- If a vessel already has a valid extension letter, the letter remains valid until the extension compliance date.
Shipowners can still apply to the US Coast Guard for extensions and supplemental extensions but must be able to provide evidence of why compliance with US regulation is not possible.

For instance Shipowners must be able to provide the Coast Guard with:

- correspondence confirming that a ballast water management system is not yet available for that particular vessel;

- Proof that the vessel has design limitations that prevents the installation of a Coast Guard Approved Ballast Water Management System (what system does the vessel need, flow rate, power, footprint...);

- Any safety concerns related to the installation of an approved system.

In brief, Shipowners must have a compliance strategy plan in place and be able to address contingencies for non performance. Keep records of all discussion with the ballast water management system vendors, engineering firms and dry-docks.
USCG Extension Program - AMS Equipped Vessels

• Prior to March 2017 - Vessels equipped with an AMS were able to receive extension from the Coast Guard.

• After March 2017 - Vessels that already have an Alternative Management System installed on board, are considered in compliance and most likely will not receive an extension.

• The vessel may use the AMS for 5 years past the compliance date.
Implementation of BWM Plan

- The US Coast Guard issued another bulletin on June 20, 2017 reinforcing the importance of compliance with US Regulation and stressing how:

“Masters, owners/operators, agents and persons-in-charge are further reminded to maintain an up-to-date vessel specific BWM plan as detailed in 33 CFR 151.2050(g) and to provide training on the application of ballast water and sediment management and treatment procedures as required by 33 CFR 151.2050(h). These plans should include options for the Master to consider if the BWMS stops operating or becomes unexpectedly unavailable during a voyage, and the need to contact the cognizant COTP or District Commander as soon as possible to discuss options.”
Enforcement - Proceedings

- The US Coast Guard is starting to bring proceedings against vessel in violation of the US Regulation. At least two instances since January 2017. One in February and one at the end of July.

- The two vessels were found in violation of the US Regulation during routine port inspections that include an inspection of the ballast water management procedures and compliance. (The Coast Guard conducts roughly 9,300 ballast water management inspections every year – around 5,500 inspections took place since 2010)

- "The Coast Guard is committed to the protection of the marine environment through strong and robust administration and oversight of ballast water management practices," said Capt. Joe Raymond, commanding officer, of the US Coast Guard.

- Potential penalties are calculated according to the National Invasive Species Act and can reach a maximum of $38,175 per violation.

- Need also to keep in mind state/local regulations that can effect the penalties.
Lesson Learned

• Plan for compliance and be able to back up your plan with the US Coast Guard.
• If something goes south:
  Stay calm and keep your lawyer on speed-dial!
Questions?

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