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The Docket Management Facility (USCG-2003-14273) - 20
U.S. Department of Transportation (DOT), room PL-401
400 Seventh Street, SW
Washington DC 20590-0001

28 October 2003

Fax. No. 00 1 202 493 2251

Dear Sir,

MANDATORY BALLAST WATER PROGRAMME FOR U.S. WATERS

The International Chamber of Shipping (ICS), which represents more than half of the world's merchant tonnage, wishes to respond to the notice of proposed rulemaking and request for comments published in the United States Federal Register on July 30, 2003, volume 68 No.146 and pages 44691 - 44696, under the reference USCG-2003-14273, entitled Mandatory Ballast Water Management Program for U.S. Waters.

ICS is grateful for the opportunity to comment on the proposed rulemaking. The following points are intended to be helpful and constructive, and to assist the US Coast Guard in creating a practical and achievable regulation.

First, ICS urges that a principle consideration should be the need for all mandatory regulations applying to ships engaged in international trade to present a consistent national and international intent. The work now drawing towards completion at IMO, with the aim of establishing an international convention for the management of ballast water and sediment discharged from ships, has been significantly shaped by contributions from the United States delegation. Therefore, whenever the presently proposed USCG rulemaking deals with some aspect that is already in the IMO text, the international convention should be given precedence or copied exactly. This will make compliance easier for ships' crews, and therefore more likely, through having a consistent practice to follow and a consistent performance target to meet. It will be beneficial for there to be worldwide implementation of similar requirements, that can be prepared for thoroughly without confusion as to applicability, rather than would be the case with varied or even conflicting national and regional requirements.

Second, ICS recognises that the US Coast Guard has tacitly accepted that, rightly or wrongly, the obligation to do the work necessary to reduce the risk of

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discharging harmful aquatic organisms or pathogens in ballast water, will fall onto ships. The Coast Guard have succinctly listed, and provided for use of, the four main processes that ships could employ in order to do that work, but also accepted that, through lack of resources for three of them, ballast water exchange at sea is the most likely option. ICS concurs with the US Coast Guard in those acceptances. The removal of a minimum depth requirement while retaining the specified distance from land, is welcomed as a means to allow exchange to be performed more frequently. Recognising, therefore, that the United States wishes to proceed with this matter, and without prejudice to our recommendation to align US requirements wholly with IMO, ICS asks for clarification on the following points in the NPRM.

1. The text used in §151.2035(a) refers to ships "that operate in the waters of the United States". It does not prescribe that discharge of ballast water is a necessary part of that operation, and thus gives the impression that ships on innocent passage through US waters but not calling at a US port are also required to comply. Clarification that this is not so is requested.
2. A related need is for definition of the term "United States' waters" or "Waters of the United States". Does the term mean territorial waters (traditionally 12 miles from the baseline) or the entire Exclusive Economic Zone (200 miles from the baseline) ?
3. §151.2037(c) provides an exception to a ship that cannot perform exchange at sea, and uses the term "discharge only the amount operationally necessary". For a ship due to load a full cargo that will have to mean all its ballast. Clarification is sought that, where appropriate, this is so.

Third, it is felt that the perception by the United States of a need for a further rulemaking, adding to the earlier rulemaking in 1999, has been to some extent inevitable, primarily due to cost. Despite the unwillingness of many parties to quote cost as a reason for avoiding environmentally beneficial procedures, ship operators feel that it is necessary to do so in this instance. It will be recalled that in our letter of 19 July 1999, responding to the interim rule on implementation of the National Invasive Species Act (USCG 1998-3423), ICS drew attention to the unreality of ignoring the costs incurred by a ship actually performing ballast water management. Doing so enabled the rule making to be presented as requiring a lower expense to the industry, and thus to US trade. The result has been, as predicted, that the high real cost, in terms of both material and human resources expended, has persuaded operators engaged in a highly competitive trade where all costs must be truly taken into account, to avoid the additional cost as long as possible. The present NPRM proposes to make performance of ballast water management mandatory, and the entire trade will now incur the higher costs because they will become part of the freight rates.

In that light, therefore, ICS wishes to repeat its earlier urging to significantly upgrade the estimation of costs that will be incurred, as given on page 44694 of the NPRM. Although the numbers for ships and exchanges can be accepted, the costs seem to be unrealistically low. There is an assumption

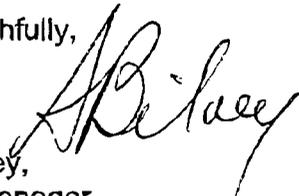
that 7420 ships will make 11,500 ballast water exchanges at a total cost of \$15.8 million, or an average of about \$1,374 each exchange.

Inevitably, bigger ships with more ballast to exchange will incur higher costs; that is implicit in the general figure given. However, discussion and analysis within ICS meetings indicates that only the very smallest ships can envisage completing the exchange at a cost below that figure. For very large ships, such as Capesize dry bulk carriers, with 50,000 or even 100,000 tonnes of ballast water to exchange, the costs will be very much higher indeed – in excess of \$20,000 per exchange. Allowing, conservatively, for that to be the higher figure, and allowing that one quarter of ships can perform the exchange for less, the total cost to shipping is likely to be many times the figure given in the NPRM. That cost will necessarily become an addition to the cost of exporting cargo from the USA.

Finally, ICS urges that the introduction of any final rule mandating ballast water management be delayed until the outcome of the debate at the IMO Diplomatic Conference in February 2004 is known, and implementation be aligned.

ICS is grateful for the opportunity to comment, and remains ready to enlarge upon the comments above, or to provide further comments if required.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'A. Bilney', written in black ink.

Alec Bilney,
Marine Manager