STATUS OF THE IMO BALLAST WATER CONVENTION

Kathy Metcalf
President, Chamber of Shipping of America
Chairman, ICS Environmental Subcommittee

ICS International Shipping Conference 2015
Unenviable Options???

Too much uncertainty at all levels, but the light at the end of the tunnel need not be a train!
IMO Ballast Water Convention

- Agreed in 2004
- Post Convention Development of Implementation Guidelines
- Entry into Force Criteria – minimum 30 states/35% of world tonnage
- Current Status – 44 states/32.86% of world tonnage
- 8 of 10 of largest flag states have NOT ratified (IMO 2014 data)
- Compare with SOLAS, MARPOL, COLREGS, STCW (ratified by 98% plus of world tonnage)
- Extraordinary efforts by the Secretary General to resolve problems
- Why the delay 11 years after agreement?
Current Challenges Being Addressed by IMO

- Look to decisions at MEPC 67 (Oct 2014) and MEPC 68 (May 2015)
- G-8 Guidelines review/revision (Type Approval (TA))
- Regulation D-2 Study (IMO/WMU)
- Resolution MEPC.253(67) – Measures to be Taken to Facilitate Entry Into Force of the BW Convention (early movers should “not be penalized”)
- Regulation A-3/A-4 review taking into account intent of Resolution A.1088(28)
- Port State Control Implications
- Work continues at MEPC 69 (April 2016)
G-8 Guidelines Review/Revision

• “rules of the game” for national type approvals
• agreed lack of robustness and/or omissions in original G-8
• Over 20 problematic issues identified
• Work being done by Correspondence Group with report to MEPC
• What is the problem?

• 7 years since original G-8 agreed...we know more now than then
• Original G-8 seen as overly broad and subject to wide variation in interpretation as to type approval testing requirements
• Revisions will change the fundamental rules of type approval testing and issuance
• Moving target for manufacturers and shipowners which will purchase these systems
• How to address pre-revision type approvals on completion of G-8 review/revision?
• Uncertainty for all stakeholders
Regulation D-2 Study

- Resulted from numerous (but largely undocumented) reports of failures in real world operation

- 2 track survey for data collection and analysis
  1) Testing of systems and granting of type approvals
  2) Technical, mechanical and biological performance of TA systems installed onboard

- Key questions:
  1) Are systems operating effectively and reliably?
  2) If no, what are causes of non-performance?
  3) If no, how can G-8 be revised to reduce or eliminate these failures?
  4) If no, are there other aspects of the Convention leading to these failures and if so, how or should Convention be changed to reduce or eliminate these failures?

- Final report to IMO November 2015
Resolution MEPC.253(67) – Measures to be Taken to Facilitate Entry Into Force of the BW Convention

• Need for clarification on intent and practical application of text that agrees that shipowners that have installed TA systems prior to the application of the revised G-8 “**should not be penalized**”

• After robust discussions at MEPC 68 it was agreed to:
  - Develop guidance on contingency measures
  - Consider expansion of trial period into experience building phase
  - After review of information from trial and experience building phase, consider need for review of Convention to ensure “non-penalization for early movers”
  - Consider implications on port state control programs

• Note reservation filed at MEPC 68 on concept of nonpenalization of early movers by US
Regulation A-3/A-4 review

• Regulation A-3 addresses **exceptions** (safety of ship, damage to ship, minimize pollution, “same location”)
• Regulation A-4 addresses **exemptions** (same voyage between two specified ports; based on risk assessment protocol)
• Need to define term “same location” as applied to exceptions permitted under the Convention
• Need to develop guidance for issuing exemptions as permitted under the Convention (guidance on risk assessment of ports/locations of the “same risk area” where ballast water exchange is not permitted or possible and ballast water treatment is not justified due low risk)
Port State Control (PSC) Implications

• Convention permits PSC sampling without clear grounds

• Discussions ongoing on when to sample (at what stage of deballasting) and where to sample (sampling port locations) and how to sample to assure “representative” sample

• Indicative analysis (potentially instantaneous; gross measure of potential non-compliance) versus detailed analysis (potentially days/weeks; precise laboratory analysis)

• Majority position that indicative analysis should NOT be used as sole compliance measure but rather should be trigger to justify detailed analysis

• PSC dilemma results when indicative analysis suggests non-compliance but detailed analysis results will not likely be obtained until long after vessel has sailed
Preliminary Conclusion

At the international level, there are significant uncertainties which will remain until decisions are agreed on the 5 points made above.

The concerns created by these uncertainties apply to ballast water management system manufacturers, vessel owners and IMO member states.

So let’s solve the IMO challenges and we’ll be on our way....yes????

NOT
ADDITIONAL CHALLENGES AND COMPLICATIONS

MULTI-PARTY PARALYSIS?
**NATIONAL/SUB-NATIONAL REQUIREMENTS**

- **US Coast Guard**
  - Controlling statutes (NISA 1996)
  - Resulting in USCG regulations

- **US EPA**
  - Controlling statute (Clean Water Act)
  - Resulting in NPDES – Vessel General Permit
  - Includes state section 401 certification program

- **Individual US states**
  - May impose more stringent requirements
  - Via VGP section 401 certification
  - A number of states have
  - Most notable is California
US Coast Guard - Program Parameters

• Implementation Schedule
  • 1 January 2013 – new vessels
  • First scheduled drydocking after 1 January 2014/2016 – existing vessels

• Permanent Compliance Options
  • No discharge
  • US type approved system
  • Discharge to shore
  • US public water supply

• Temporary Compliance Options
  • Alternate Management System (AMS)
  • Extension
US Coast Guard - Temporary Compliance Options

• Alternate Management Systems (AMS)
  • Temporary acceptance of non-US type approved system per Convention
  • Bridging strategy until US TAs are issued
  • Used in lieu of ballast water exchange
  • Must be installed prior to compliance date
  • Valid for 5 years from installation date
  • Currently 54 systems have been granted AMS approvals
  • AMS is not type approval but requires submission of an informal type approval application

• Extensions to Compliance Date
  • Basis is non-availability of US type approved systems fit for purpose relative to a specific ship e.g. flow rates, footprints
  • Other basis including non-availability of sufficient number of fit for purpose systems, non-availability of shipyards by vessel’s implementation date
  • Issued for a fixed date (not first drydocking) and currently only for 2 years
  • May request supplemental extensions if above criteria are met
  • Currently issuing extensions for 1 January 2018 for vessels with 2016 drydocking dates
US Coast Guard – Areas of Uncertainty

• When will US type approvals be granted?
  • Originally projected for 2015 (not yet)
  • Currently 3 manufacturers have submitted test packages for review and decision by USCG (all UV based)
  • More systems in queue for US type approval testing (24 have filed letters of intent to pursue US type approval)
  • Original shortage of accepted labs now eased
  • 4 labs now approved – NSF (US), DNV-GL (Norway), ROK (Korea), Control Union Certifications (Netherlands), Lloyd’s Register EMEA (UK)

• UV Based Ballast Water Treatment Systems – Test Protocols
  • “viable” versus “living” criteria
  • US Expert group working on “acceptable” equivalent testing/measurement protocol
  • But note, a number of UV systems with non-US type approvals have utilized the measurement protocol in question
US EPA – Vessel General Permit

• Generally aligns with USCG requirements
• Except…….
  • More specific periodic testing requirements – functional, biological and residual performance assessments
  • EPA does NOT recognize USCG issued extensions (EPA Enforcement Policy Letter stating “low enforcement priority”)
  • State section 401 certifications permit individual states to establish more stringent requirements….and many have
The California Program

- Enacted performance standards long before Convention and US regulations were in place (1999 et al)
- Interim standard with final standard of zero detect
- No change in standard but gradual realization that standards are not achievable in the time frame contained in the statute/regulation
- Most recent initiative waiting for the Governor’s signature (AB 1312)
- Would extend compliance dates from 2016 to 2020 for interim standard and from 2020 to 2030 for final “zero detect” standard
Coping Strategies

Shaping the BWM Specifications
Conundrum: Making It Work
KEY CONSIDERATIONS FOR BWMS MANUFACTURERS

- Initial test results (pre-type approval testing)?
- System limitations e.g. salinity, temperature, flow rates?
- Desired target market segment (vessel type, operating conditions)?
- Need (or lack thereof) to reduce system limitations in second bullet above?
- Type approval from any non-US Administration?
- AMS approval from the US?
- Type approval from the US including status of testing by certified lab leading to eventual US type approval?
- Partnerships with ship owners for shipboard testing?
KEY ISSUES FOR SHIP OWNERS DURING BWMS SELECTION

• Significant amount of money at stake here – manufacturers and ship owners

• All stakeholders need and deserve clarity as to requirements e.g. any operating restrictions should be clearly indicated on TA certificate

• What limitations are contained on the TA certificate e.g. salinity, temperature, other?

• Assume worldwide trade

• Use US ETV as default testing protocol for type approvals
KEY CONSIDERATIONS FOR SHIP OWNERS DURING BWMS SELECTION

• Does BWMS meet **operational needs of the vessel** e.g. flow rates, footprint, power requirements, installation and maintenance feasibility, sampling and monitoring requirements, chemical storage requirements?

• Does system have **US Type approval**?

• Does system have **AMS approval**?

• If only AMS approval, is manufacturer **pursuing US type approval** and if so, where is the system in the testing queue e.g. expected timeline for completion?

• Does manufacturer have a **global network** for repair, technical assistance and spare parts?

• What are **sales contract provisions for warranties and guarantees** e.g. what commercial outcome if system does not perform as promised and/or US type approval is not granted?
Coping Strategies

- Develop communications network across all stakeholders (manufacturers, ship owners, governments)
- Stay engaged
- Engage in ongoing discussions
  - IMO (National Administrations)
  - US (USCG, EPA)
  - Extra and subnational (EU, US states)
- Develop strategy to influence positive outcomes reflecting real world operations
YOU CAN’T BUILD A REPUTATION ON WHAT YOU ARE GOING TO DO.

Henry Ford
Contact Information

Kathy Metcalf

Chamber of Shipping of America
1730 Rhode Island Ave, NW
Suite 702
Washington, DC  20036

(202) 775-4399
kmetcalf@knowships.org