

INTERNATIONAL CHAMBER OF SHIPPING
12 Carthusian Street,
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United Kingdom

November 26, 2009

Via Email: Federal Rulemaking Portal at <http://www.regulations.gov>

Docket ID No. USCG-2001-10486
United States Coast Guard
Docket Management Facility (M-30)
US Department of Transportation
West Building Ground Floor
Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

RE: Standards for Living Organisms in Ships' Ballast Water Discharged in US Waters (Notice of Proposed Rulemaking, Federal Register, August 28, 2009. Pages 44632-44672).

Dear Sir or Madam:

The International Chamber of Shipping (ICS) wishes to comment on the notice of proposed rulemaking regarding standards for living organisms in ships' ballast water in accordance with the Notice of Proposed Rulemaking.

ICS was established in 1921 and is the principal international trade association for the shipping industry, representing all sectors and trades. ICS membership comprises the national shipowners' associations of 33 countries representing about 75% of the world's merchant tonnage. ICS interests cover all aspects of maritime affairs; in particular marine safety, ship design and construction, pollution prevention and maritime law.

ICS respectfully requests that comments submitted here be taken into account when considering the issues raised by this proposed rulemaking.

ICS has been extensively engaged in the international discussions at IMO relating to ballast water discharges, this has included participation in plenary and working group discussions as well as the Diplomatic Conference which resulted in the instrument now known as the IMO International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWMC). ICS strongly supports, and recognizes, the invaluable benefit to be derived from the

implementation of the BWMC as agreed at IMO and by which ballast water discharges can be regulated in a globally consistent manner.

ICS respects the US Government's efforts towards achieving globally accepted and consistent requirements for the control of ships' ballast water through its work at the International Maritime Organization (IMO). ICS recognizes that regulation C-1 of the BWMC allows a ratifying nation to create additional measures to prevent, reduce or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments, however it is considered regrettable that the US is now proposing to impose, through Federal legislation, more stringent biological treatment efficacy standards than are contained in the BWMC, at this stage prior to its ratification. It is possibly even more important to recognize that the development of ballast water treatment technology is such that the BWMC treatment requirements are already being proved difficult to achieve.

ICS can understand and support the US Government's intention to essentially implement the provisions of the BWMC in a timely manner. ICS fully supports any State nationally implementing shipping legislation consistent with IMO's internationally agreed solutions to environmental issues. ICS firmly believes ballast water controls to reduce the potential for aquatic invasions can only be addressed in an international context. ICS takes the view that the Phase Two treatment standard in the proposed rulemaking is premature and it is strongly recommended that the standards to be required are aligned with the IMO requirements to the maximum extent possible. Uniform global standards are considered essential to allow international shipping to operate efficiently and effectively.

ICS is not comfortable with unilateral action to impose additional requirements on international shipping relating to ballast water management and is unable to agree that such additional standards could be beneficial at this stage of the development of treatment technology. The agreed IMO BWMC provides the framework necessary to reduce the risk of aquatic invasions from ballast water discharges in an achievable manner. The US is urged to ratify, and implement the BWMC before creating new and more stringent national standards.

ICS has a number of specific concerns with parts of the proposed rule and these are presented below.

1. The specified treatment standard should be consistent with the agreed BWMC D-2 treatment standard. To require otherwise will only impose unrealistic and unachievable demands on international shipping. It is widely recognised that the Phase Two standards proposed in this rulemaking are unrealistic. To include an aspirational treatment requirement could be considered unwise as it may have the effect of casting doubt on the validity of the remaining otherwise well considered

requirements. The standard to be required and implemented must be achievable; it is recognised that equipment is now becoming available that can fulfill the BWMC D-2 standard.

2. Should the Administration adopt a two tier treatment standard concept, there must be a grandfathering provision for technology installed on vessels in accordance with the standard applicable at the time of delivery. Equipment installed in good faith should be accepted as compliant with the requirements for either the remaining life of the vessel or of the treatment system, whichever occurs first. As currently drafted, the rule would require many vessels to install two ballast water treatment systems (one meeting Phase One and then another meeting Phase Two) within a very short time period. The anticipated cost of IMO Type Approved ballast water management systems is variously estimated at between \$US 2 and 3 million; shipowners who invest such amounts of capital in equipment to protect the environment should have confidence that such equipment will remain viable and acceptable. It is extremely hard to justify retrofit upgrades within a short time frame, particularly when the level of increased environmental benefit remains in question.
3. Should the two tier system be adopted as proposed without a grandfathering clause, then there would be no incentive for the early installation of treatment systems aboard vessels. This situation could not be considered beneficial for either the development of more efficient systems, or in achieving the desired environmental benefit.
4. ICS recognizes and supports the principle that the treatment standard of the BWMC can and should be made more stringent over time, as treatment technology is further developed and equipment becomes available, provided this is supported by practicality reviews. Any such increase in stringency in future standards should only be applied to new vessels.

In summary, ICS considers that a cost/benefit case for the implementation of the rule as currently drafted and as proposed for international shipping has not been adequately argued. This comment particularly relates to the proposal for a two tier system.

ICS appreciates the opportunity to provide comment on issues raised by this proposed rule.

Respectfully submitted,

ICS etc.