

SUB-COMMITTEE ON IMPLEMENTATION
OF IMO INSTRUMENTS
1st session
Agenda item 8

III 1/8/1
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**DEVELOPMENT OF GUIDELINES ON PORT STATE CONTROL
UNDER THE 2004 BWM CONVENTION**

Comments on the report of the Correspondence Group

**Submitted by Japan, Liberia, the Marshall Islands, Panama, ICS, BIMCO,
INTERTANKO, INTERCARGO, InterManager, IPTA and WSC**

SUMMARY

Executive summary: This document comments on the report of the Correspondence Group on the Guidelines for port State control inspection for compliance with the BWM Convention. A four-tier PSC inspection approach is advocated as a pragmatic solution to the absence of validated and harmonized sampling and analysis protocols. The co-sponsors also propose to enhance the acceptance, understanding and implementation of the four-tier approach by removing problematical permissive PSC actions.

Strategic direction: 2

High-level action: 2.0.1

Planned output: 2.0.1.2

Action to be taken: Paragraph 18

Related document: III 1/8

Introduction

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.4/Rev.2) and comments on document III 1/8 (Canada) containing the report of the Correspondence Group on the Guidelines for port State control inspection for compliance with the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM Convention).

2 The co-sponsors appreciate the hard work by Canada in coordinating the correspondence group established at FSI 21. Thanks to the efforts by Canada, the draft Guidelines have significantly progressed. However, the co-sponsors still have some

concerns on issues for which further consideration is needed from the viewpoint of ratification and smooth implementation of the BWM Convention. Although these issues will be discussed in plenary and in the working group expected to be established at III 1, this document provides comments in the subsequent paragraphs on the issues remaining in order to clarify the major concerns of the co-sponsors.

Four-tier approach

3 To ensure smooth implementation of PSC, the co-sponsors are convinced that the four-tier approach (initial inspection, more detailed inspection, indicative analysis and detailed analysis) is a pragmatic approach and should be incorporated into the PSC procedures under the BWM Convention. The co-sponsors recognize that an inspection is permitted at the request of another State under article 10.4 of the BWM Convention, but believe that the direct reference in the draft Guidelines (paragraph 2.1.1.2) should be removed, as this situation will only be implemented on a case-by-case basis and therefore feel that such text is unnecessary.

Sampling

4 The co-sponsors are fully aware of the provisions of article 9.1(c) of the BWM Convention in respect of the permissibility of sampling at the first stage of a PSC inspection. However, in the ongoing absence of validated and harmonized sampling and analysis protocols, the co-sponsors are of the view that to undertake sampling at such an early stage may produce very uncertain results and risk unwarranted action against ships which have done everything necessary to comply with the BWM Convention. In this context, the co-sponsors do not support the view that sampling could occur at any time during PSC. The common PSC procedures start with checking certificates and documents required by various Conventions such as SOLAS, MARPOL, LL and STCW, in order to utilize time effectively within the limited time of an inspection, usually a few hours. If the sampling of ballast water occurs at the first stage, the overall PSC inspection would not be conducted systematically and may cause undue delay of the ship concerned.

5 In this regard, attention should be paid to the concerns expressed by international shipping industries about PSC under the BWM Convention. For instance, it is acknowledged that ICS has expressed concern about the issues related to the implementation of the BWM Convention and has sought to address the criteria to be used for sampling ballast water during PSC inspections. They further suggested that sampling of ballast water by PSC should be conducted only after "clear grounds" for non-compliance have been established, in line with all other conventions.

6 It should also be recalled that many of the sampling and analysis methods have not yet been fully developed and adequately validated. Indeed, this was the reason why MEPC 65 approved the *Guidance on ballast water sampling and analysis for trial use in accordance with the BWM Convention and Guidelines (G2)* (BWM.2/Circ.42). In light of this, the procedure of PSC protocol under the BWM Convention should adopt the proposed four-stage inspection model taking into account the current technical level of sampling and test methods.

7 In this regard, it is suggested that the following phrases or sentences in the draft Guidelines be removed:

- .1 " , or a request from another party under article 10" (paragraph 2.1.1.2);
- .2 "Although it can occur at any time" (paragraph 2.1.1.3);

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- .3 "The PSCO, on behalf of the port State may take samples at any time during the inspection to verify compliance under article 9.1(c) of the BWM Convention" (paragraph 2.1.2);
 - .4 "The PSCO or any authorized authority of an Administration may sample the ship's ballast water at any time during the inspection to verify compliance under article 9.1(c) of the Convention" (paragraph 2.5.1); and
 - .5 "For this reason, the PSCO has the discretion to reserve such sampling for circumstances under which more information is needed than can be obtained through a detailed inspection undertaken on the basis of clear grounds" (paragraph 2.5.3).

Indicative analysis of compliance

8 With regard to indicative analysis of compliance, a ship should not be detained on the basis of the results of the indicative analysis of compliance only, but on basis of the results of the detailed analysis, since the confidence level of indicative analysis is very low. Attention should be paid to paragraph 6.3 of *the Guidelines for ballast water sampling (G2)*: "Prior to testing for compliance with D-2 standard, it is recommended that, as a first step, an indicative analysis of ballast water discharge may be undertaken to establish whether a ship is potentially compliant or non-compliant". The same is described in paragraph 1.3 of the above-mentioned Guidance. These sections clearly recommend that indicative analysis of compliance should be used as a means of screening, not for final judgment of compliance/non-compliance.

9 In addition, as stipulated in paragraph 2.1.4 of the annex to BWM.2/Circ.42, indicative analysis is a relatively quick measurement and simpler than detailed analysis.

10 Nevertheless, if indicative analysis is allowed to be used as a means for final judgement of compliance/non-compliance, it is possible that a ship who, in reality, fully complies with the D-2 standard might be detained based on an unreliable and unrepeatable result of the indicative analysis. In such cases, there is a possibility that the port State and/or port authority would be challenged or sued by the shipping company as the result of the indicative analysis being incorrect.

11 The Sub-Committee should understand that, in principle, the Guidelines need to describe the most realistic and representative flow of PSC procedures, but should not contain possible or risky scenarios. Taking into account this principle, the four-stage inspection should be described in an internationally harmonized manner with no exception, that is, indicative analysis of compliance used as a means of screening, not for final judgment of compliance/non-compliance.

12 In this regard, it is suggested that the following phrases or sentences in the draft Guidelines should be removed:

- .1 "would supplement indicative analysis with" (paragraph 2.1.1.4); and
- .2 "PSCO may carry out an indicative or detailed analysis in accordance with the *Guidelines for Ballast Water Sampling (G2)* and guidance on ballast water sampling and analysis for compliance with the BWM Convention as developed by the Organization. If an indicative analysis indicates that the ship poses a threat to the environment, human health, property or resources, or is inconclusive, meaning that detailed analysis may be required, the PSCO shall take action pursuant to article 10.3 as described above in section 4" (paragraph 2.5.4)

Flowchart for the PSC Guidelines

13 With regard to paragraph 10 of document III 1/8, the co-sponsors support Option 1 (strict four-stage hierarchical diagram) rather than Option 2 (hybrid diagram) because, as noted above, a ship could be detained on the basis of the results of indicative analysis only in Option 2. The co-sponsors are concerned that if sampling can be implemented at any time during the PSC inspection, as shown in Option 2, the overall PSC inspection would not be conducted systematically and may cause undue delay of the ship.

The threshold for moving from indicative analysis to detailed analysis

14 With regard to paragraph 2.5.4 of annex 1 to document III 1/8, the threshold for moving from indicative analysis to detailed analysis should be stipulated in order to avoid any possible confusion in PSC procedures. The co-sponsors think that exceeding the D-2 criterion by [1,000] times seems suitable for the threshold, taking into account the present low level of confidence relating to indicative analysis.

Type Approval Certificate

15 The BWM Convention does not require a ship to carry a Type Approval Certificate on board and such a carriage is only referenced in the Guidelines. Therefore, the absence of a Type Approval Certificate or the contents of a Type Approval Certificate should not form any part of a PSC inspection.

16 In this regard, it is suggested that the following phrases or sentences in the draft Guidelines should be removed:

- .1 "or the ship's crew intends to use one, check that a valid Type Approval Certificate is on board [including its annexes and appendices], and" (paragraph 2.2.1.5);
- .2 ", which should be on board the ship (as per Guidelines (G8), paragraph 6.1)" (paragraph 2.2.1*bis*);
- .3 "BWMC and the Type Approval Certificate or has not been maintained" (paragraph 2.3.2.5); and
- .4 "If the BWMP requires the use of a BWMS, or the ship's crew intends to use one, the BWMS is not suitable for treatment of the ballast water carried or to be loaded on board the ship, taking into account the BWRB, limiting conditions on the Type Approval Certificate and the information provided in the required appendix or annex to the Type Approval Certificate pursuant to resolution MEPC.228(65)" (paragraph 2.3.2.10).

Other issues

17 As stated in section 1.1 of annex 2 to document III 1/8, the major part of the purpose of annex 2 is to provide general recommendations on sampling protocols. In this regard, attention should be paid to the subparagraph 2 of the terms of reference of the correspondence group (document MEPC 65/WP.7/Rev.1, annex 4):

- .2 refrain from discussing any ballast water sampling or analysis methodology until the appropriate methodology or protocols have been agreed by IMO;"

In addition, there are also a few sections in annex 2 to document III 1/8, such as sections 9 and 10, which address the area that is already covered by the draft Guidelines under consideration. Therefore, annex 2 to document III 1/8 should neither be taken into account when developing the PSC guidelines, nor attached therein.

Action requested of the Sub-Committee

18 The Sub-Committee is invited to consider the comments above and take action as appropriate.
