

ICS POSITION ON RATIFICATION OF IMO BALLAST WATER MANAGEMENT CONVENTION, 2004

Background

Following the adoption of the IMO Ballast Water Management (BWM) Convention in 2004, ICS encouraged IMO Member States to ratify the Convention as soon as possible. The shipping industry did this notwithstanding the fact that at that time the equipment required to be fitted on board ships was aspirational, there was no knowledge of the equipment required, the costs involved for industry were not yet known, and that the various Guidelines needed to bring about smooth implementation had not yet been developed by IMO.

More recently, however, ICS has become very concerned about the lack of robustness of the current IMO type-approval process for the new treatment equipment that will be required, as well as about the development of criteria to be used for sampling ballast water during port State control inspections.

It is understood that these concerns are shared by many IMO Member States, including some of those that have not yet ratified the Convention thus preventing it from entering into force.

At the moment, therefore, the position of ICS is that it cannot actively encourage additional IMO Member States to ratify the BWM Convention until there is confidence that the new treatment equipment will actually work, or that when in operational use it will comply with the standards that IMO has set for controlling unwanted marine micro-organisms.

The Way Forward

ICS believes that the legal changes needed to make the ballast regime fit for purpose are relatively straightforward and could be agreed in principle quickly by IMO Member States at MEPC 66.

ICS (with other industry organisations) has already made a submission to the IMO Marine Environment Protection Committee (MEPC 66/2/11) suggesting a possible way forward.

Following further discussion amongst ICS member national shipowners' associations, ICS now suggests that MEPC 66 might agree a 'road map' so that the necessary changes can be made to ensure that the Convention is properly implemented, making it easier for additional IMO Member States to decide to ratify the Convention and to bring about entry into force.

ICS suggests that the mechanism for achieving this 'road map' could be the adoption of an MEPC Resolution at the earliest possible opportunity.

MEPC Resolution

The purpose of an MEPC Resolution would be to provide confidence that a shipowner who, in good faith, fits and operates ballast water treatment equipment that has been type-approved in accordance with IMO Guidelines, would be protected against the ship being found non-compliant in circumstances when the shipowner has otherwise been wholly diligent and has fully adhered to recommendations concerning the operation of the equipment.

ICS suggests that the proposed MEPC Resolution might take into account the following provisions and understandings:

Before the Convention enters into force

1. Agreement should be sought amongst Parties so that the G8 Guidelines will be given a mandatory status, as soon as possible after the Convention enters into force and amendments can be adopted;
2. A comprehensive and exhaustive review of the G8 type-approval Guidelines should be undertaken and that this review of the G8 Guidelines should commence before the Convention enters into force; and
3. In the interim, the existing G8 guidelines would apply, on the understanding that they will be fully adhered to pending any change to mandatory status as soon as possible after the Convention enters into force.

After the Convention enters into force

4. 'First generation' type-approved equipment, installed in good faith prior to the Convention entering into force and before the G8 Guidelines have been reviewed and amended, should be grandfathered for the life of the ship, and a new category of 'gross non-compliance' be defined and applied to these systems to allow for some variation in treatment efficacy during normal operation;
5. Agreement should be sought amongst Parties so that, as soon as the Convention has entered into force, the agreed fixed period moratorium on non-compliance penalties during the sampling and analysis 'test period' will be viewed as an experience-building phase, not as a vehicle to ban type approved equipment already fitted;
6. During the fixed period moratorium as has been agreed, penalties should be limited to deliberate attempts at non-compliance;
7. It should be recognised that many perceived problems would be avoided if, as soon as the Convention enters into force:

Convention Article 9 'Inspection of Ships' was amended by repositioning 1.c 'sampling of ships ballast water' to paragraph 2 which determines actions following 'clear grounds'.

This is to show that inspection for compliance should start with the type-approval of the equipment and records of its correct operation. Only after 'clear grounds' for non-compliance have been established should sampling of ballast water by port State Control be necessary or appropriate. This would bring PSC inspection criteria in line with all other regulations; and

8. That clarification is needed that the port State control regime is intended to monitor for diligent application of the BWM Convention provisions. It is not intended to penalise owners who in good faith have fitted and conscientiously operate type-approved equipment correctly.

ICS fervently hopes that MEPC 66 will consider the adoption of a resolution along the lines described above. Following the adoption at MEPC of such a resolution then the ICS Board will be invited to review its position on recommending ratification.