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HARMFUL AQUATIC ORGANISMS IN BALLAST WATER

Structuring the experience-building phase associated with the BWM Convention

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SUMMARY

Executive summary: It is proposed that the experience-building phase of the Roadmap for implementation of the BWM Convention be structured into three stages: data gathering, data analysis, and Convention review. It is also proposed that, throughout these stages, the non-penalization set out in paragraphs 3 to 5 of the roadmap be extended to all ships.

Strategic direction: 2

High-level action: 2.0.1

Output: 2.0.1.2

Action to be taken: Paragraph 26

Related documents: MEPC 68/WP.8 (annex 2) and MEPC 69/21 (paragraph 4.26)

Background

1 The Committee has developed the "Roadmap for the Implementation of the BWM Convention" (MEPC 68/WP.8, annex 2) and has agreed to use it to develop measures to facilitate the implementation of the Convention. This document proposes linkages between certain roadmap elements: certain aspects of non-penalization (specifically roadmap, paragraphs 3 to 5), the experience-building phase, data-gathering, and the review of the Convention. (Other agreed elements of the roadmap are not relevant to this proposal.)

2 This document responds to the invitation by MEPC 69 (set out in document MEPC 69/21), for submissions on a structured plan to collect and analyse data during the experience-building phase (paragraph 4.26.2), and the scope and timing of any review of the Convention in relation to the experience-building phase (paragraph 4.26.3). It builds on the review of the *Guidance on ballast water sampling and analysis for trial use in accordance with the BWM Convention and Guidelines (G2)* (Circular BWM.2/Circ.42/Rev.1) that was agreed at MEPC 65.

3 A structured plan to collect and analyse data is vital to ensure access to information the Committee will need to monitor the early implementation of the Convention. The challenge of accessing information was evident in the recent study of regulation D-2 of the Convention (MEPC 69/4/4). Despite best efforts by the World Maritime University, the study was only able to consider 122 of the estimated 2,410 ships with installed ballast water management systems (BWMS). This did not allow for an extensive and definitive assessment of the reliability and performance of BWMS in routine operation. It is important to ensure that the Committee does not similarly lack data after the Convention enters into force.

Proposal

4 The co-sponsors envision the experience-building phase as a time to permit all stakeholders (such as shipowners, manufacturers of BWMS, recognized organizations, Member States and the Organization) to gain familiarity with the Convention and to:

- .1 gather and submit data concerning the implementation of the Convention;
- .2 participate in the analysis of this data in the Ballast Water Review Group; and
- .3 undertake a review of the text of the Convention to identify any areas where the evidence demonstrates a need for improvement of the Convention, and then develop a package containing any critical amendments.

5 To this end, the co-sponsors propose that MEPC structure the experience-building phase into three objective, transparent and inclusive stages: a data gathering stage, a data analysis stage, and a Convention review stage. The experience-building phase would end following the entry into force of any critical amendments to the Convention.

6 Throughout the experience-building phase, the co-sponsors propose that non-penalization following the principles of paragraphs 3 to 5 of the roadmap should be extended to all ships subject to the Convention.

7 This proposal is summarized in figure 1. The remainder of this document expands on the rationale and activities proposed for each stage of the experience-building phase.

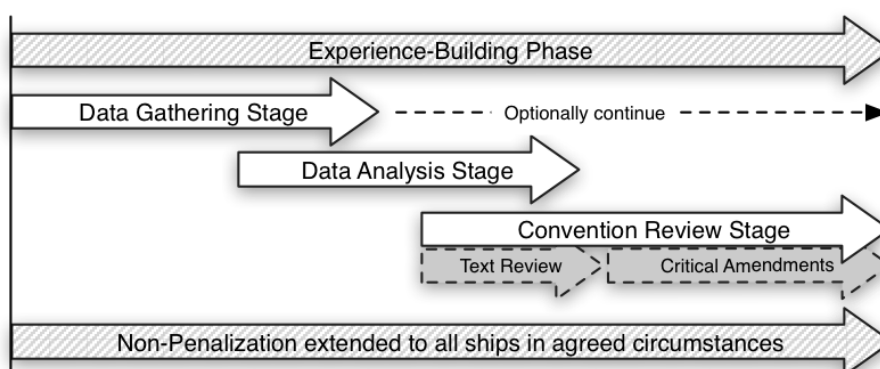


Figure 1: Proposed stages of the experience-building phase

Non-penalization

8 The implementation of any new and transformational convention can be expected to pose challenges. Provided that shipowners and crews take the steps under their control to comply with the Convention, the co-sponsors are of the view that environmental protection (rather than penalization) should be emphasized while the Committee gains experience with the Convention and reviews its requirements. This principle, which would be additional to the non-penalization already agreed in the roadmap, can be expressed as follows:

"A. Throughout all three stages of the experience-building phase, a ship should not be penalized (sanctioned, warned, detained or excluded) solely due to an exceedance of the D-2 standard following use of a BWMS provided that:

- .1 the BWMS is approved in accordance with regulation D-3;
- .2 the BWMS has been installed correctly, and maintained in accordance with the manufacturer's instructions;
- .3 the approved ballast water management plan has been followed, including the operational instructions and the manufacturer's specifications for the BWMS; and
- .4 the self-monitoring system of the BWMS indicates that the treatment process is working properly.

B. The measures in paragraph A do not pertain to other actions of the port State pursuant to articles 9.3 and 10.3 of the Convention concerning protection of the environment, human health, property and resources.

C. The port State, flag State and shipowner should take into account guidelines from the Organization on contingency measures in determining the most appropriate solution to allow for the discharge of non-compliant ballast water."

Data gathering stage

9 It is important that the early implementation of the Convention unfold in a data-rich environment in order to permit MEPC to monitor aspects of the implementation that are working well, and to shed light on aspects of the implementation that require further attention.

10 In light of the advanced stage of ratification of the Convention, the co-sponsors are of the view that the Committee should make arrangements to develop a structured plan for data gathering as a matter of priority, including standardized templates for the submission of data. In developing this plan, the Committee may wish to take into account article 6.1 of the Convention (research and monitoring), the recommendations for the trial period associated with methods for sampling and analysis (BLG 17/18, annex 6), and the need for objective data on matters such as:

- .1 the number of ships certified, the main issues identified in surveys (if any), and the proportion of certificates based on the installation of BWMS vs. other methods of compliance vs. exemptions;
- .2 the operational status of BWMS upon installation and over time, crew familiarity with BWMS, systematic BWMS maintenance issues (including with monitoring and dosing components), and incident reports with respect to the safety of ships (including tank coatings), crews and the environment;

- .3 the number and volume of ballast water discharges, together with the methods used for the management of these discharges, any exceptions or exemptions, and the type and outcome of any sampling/analysis undertaken;
- .4 the circumstances of any failures to achieve the standards of regulations D-1 and D-2, together with the extent of exceedance of the standard, and the type and frequency of any contingency measures employed;
- .5 the number and type of compliance assessments other than those associated with regulations D-1 and D-2, the proportion of ships found to be in compliance with the Convention in such assessments, and the circumstances and actions taken in the case of any non-compliance (including any harm mitigation strategy); and
- .6 methods for sampling and analysing ballast water, and the results of any biological and chemical analysis of treated water (towards monitoring the effectiveness of ballast water management).

11 The co-sponsors envision that most data submissions will be aggregated reports provided by port States and Administrations. That said, the Committee should take an inclusive approach and welcome data submissions from shipowners, BWMS manufacturers, recognized organizations, MOUs, interested members of the Organization, universities, etc.

12 The non-penalization principles described above will establish conditions that will facilitate this data gathering. Commercial sensitivities will be protected through the use of aggregate reporting. The co-sponsors further envision that data submitted would not need to identify individual ships, shipowners or BWMS manufacturers.

13 The gathering of a sufficient amount of data can trigger the start of the data analysis stage. However, the Committee may wish to continue gathering data throughout the experience-building phase to identify emerging issues and to establish a clear baseline for any later Convention amendments.

Data analysis stage

14 In order for the experience-building phase to be successful, the Committee will also need to develop a plan to process the raw data received in order to produce useful and timely information and considerations on the evolving implementation of the Convention. To permit this process to proceed in a timely manner, the co-sponsors envision that the Ballast Water Review Group would undertake the necessary analysis and consideration based on data aggregated by the Secretariat from the standardized data templates. Further analysis by contractors or expert groups might also be requested on some points.

15 In developing a data analysis plan, the Committee may wish to consider article 6.2(b) of the Convention (concerning the effectiveness of ballast water management) and the need for the analysis to produce globally aggregated information on matters such as:

- .1 the pace of the certification of ships, any systematic challenges in fitting, commissioning, and maintaining BWMS, and the main reasons for any deficiencies noted in surveys and inspections;
- .2 statistics concerning the proportion (in number and volume) of compliant vs. non-compliant discharges associated with the D-1 (exchange) standard, the D-2 (performance) standard, exemptions and exceptions;

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- .3 the reliability of BWMS in meeting the D-2 standard, the extent of any exceedances, and any systematic reasons for failures;
 - .4 the proportion of ships in compliance with aspects of the Convention other than regulations D-1 and D-2, and the nature and circumstances of incidences of non-compliance;
 - .5 the circumstances associated with the use of exemption and exception provisions, the prevalence and rationale for the use of additional measures (regulation C-1) and ballast water uptake warnings (regulation C-2);
 - .6 potential sampling and analysis protocols, taking into account the recommendations and goals of document BLG 17/18, annex 6; and
 - .7 the effectiveness of the Convention in reducing the transfer of harmful aquatic organisms and pathogens, and safety for ships, crews and the environment.

16 The co-sponsors envision that the matters referred to in regulation D-5 (Review of standards by the Organization) would also continue to be assessed by the Ballast Water Review Group during the experience-building phase.

Convention review stage

17 At least 13 years will have passed between the adoption of the Convention and its entry into force. The co-sponsors recall that it was adopted unanimously based on the best information available to the International Conference on Ballast Water Management for Ships, which was attended by a broad spectrum of delegations that desired in part to "continue the development of safer and more effective ballast water management options".

18 The entry into force of the Convention will represent the beginning of global ballast water management. As challenges can be expected with any new global approach, the co-sponsors anticipate that there may be a need for improvements to the Convention in light of experience gained, in accordance with article 2.5 (concerning the continued development of ballast water management and standards).

19 The co-sponsors envision a Convention review stage that would consist of two parts: (a) a textual review of the Convention, followed by (b) the negotiation of a package of critical amendments. This approach will ensure that improvements to the Convention are determined holistically through an objective, transparent and inclusive Convention review, based on the information developed as part of the above data gathering and analysis stages. The Committee should develop a timeline for the remainder of the experience-building phase at the outset of the Convention review stage.

20 The textual review of the Convention will be an opportunity for the Committee to undertake an analysis of the Convention as a whole to determine if it is meeting its policy goals. During the textual review, the Committee would develop an evidence-based list of issues with the Convention. The Committee would identify any critical issues that need to be addressed before the end of the experience-building phase (as well as any non-critical issues that could be addressed after the experience-building phase).

21 Following the textual review, the Parties, through the Committee, would then negotiate a package of amendments needed to address the critical issues. The co-sponsors envision that the critical issues would include the matters noted in document MEPC 69/21 in paragraphs 4.26.4 ("occasional exceedance") and 4.26.6 ("the footnote in the roadmap").

22 The non-penalization arrangements specific to paragraph 8 of this document would conclude with the entry into force of the package of critical amendments. However, the non-penalization elements agreed in paragraphs 1 to 5 of the Roadmap, which pertain to early movers, would not be affected by the end of the experience-building phase.

23 The co-sponsors acknowledge that Parties are fully competent to propose and adopt amendments to the Convention at any time after its entry into force. However, the co-sponsors are of the view that it will generally be more productive and effective to negotiate amendments as a holistic package through the proposed structured approach to the experience-building phase. That said, certain amendments will need to proceed more quickly, such as the amendments agreed in resolution A.1088(28) and any arising safety issues. The timing of such amendments should be considered on a case-by-case basis.

Conclusion

24 Challenges can be expected with any new, transformative international regulatory regime. A concrete plan is needed to identify and respond to these challenges. Accordingly, the co-sponsors have proposed a structured process of data gathering and analysis to inform a Convention review during the experience-building phase. This will allow time to take evidence-based decisions on any needed improvements to the Convention and then to consider a package of critical changes in a holistic manner.

25 The co-sponsors have proposed that the Committee define the experience-building phase as a time for evaluating the effectiveness of the Convention. During this time, the Committee would provide reasonable assurances to responsible shipowners and crews that their efforts to comply will not result in unfair penalization. The Committee would provide similar assurances to port States that protective actions can still be taken. The Committee would ensure an objective, transparent and inclusive review of the Convention. Finally, the Committee would develop any critical evidence-based amendments, which would enter into force before the conclusion of non-penalization at the end of the experience-building phase.

Action requested of the Committee

26 The Committee is invited to consider and take action as appropriate on the proposals outlined in this document, and in particular to:

- .1 structure the experience-building phase into three stages: a data gathering stage and a data analysis stage followed by a Convention review stage;
- .2 develop, as a matter of priority, a structured plan for the data gathering and analysis stages, which should define the roles of the Ballast Water Review Group and the Secretariat, and which should include standardized templates for the submission of data;
- .3 commit to an objective, transparent and inclusive review of the text of the Convention after the data gathering and analysis stages, in order to support the subsequent negotiation by the Parties of critical amendments as a package;

- .4 agree that, during the experience-building phase and until the entry into force of critical amendments, ships subject to the Convention should not be penalized in the circumstances set out in paragraph 8 of this document, provided that port States retain the right to take actions necessary to protect their environment, human health, property and resources; and
 - .5 agree that the matters referred to in regulation D-5 of the Convention should continue to be assessed by the Ballast Water Review Group during the experience-building phase.
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