

MONTHLY REPORT for ICS

November 2023

NOTE TO THE READER: Reference to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. Please note the new address and format for Federal Register retrieval due to upgrade in US government website.

Year-End Legislative Status

The US Congress is focused on issues, most unrelated to the maritime industry. Shortly Congress will begin its Holiday recess in mid-December and will not reconvene until the second week of January 2024. Although we do not expect any action on maritime legislation through the end of the year, we thought it might be helpful to provide a status of all the maritime related bills we have been tracking as it is expected they will receive some level of attention in the coming New Year. Summaries of these bills have been included in previous monthly reports. Summaries of these bills, bill text and other helpful information may also be viewed on the Congressional website at <https://www.congress.gov/> by entering the bill number in the horizontal banner at the top of the home page.

American Port Access Privileges Act (HR 1013) – 2/14/23 – introduced by Representative Garamendi; 2/14/23 - referred to House Committee on Transportation and Infrastructure (no action since 2/14/23)

Clean Shipping Act of 2023 (HR 4024) – 6/12/23 – introduced by Representative Garcia; 6/12/23 referred to House Committee on Energy and Commerce; 6/16/23 – referred to the Subcommittee on Environment, Manufacturing, and Critical Materials (no action since 6/16/23)

International Maritime Pollution Accountability Act (S 1920) – 6/8/23 – introduced by Senator Whitehouse; 6/8/23 – referred to the Committee on Environment and Public Works (not action since 6/8/23)

Ocean Shipping Antitrust Enforcement Act (HR 1696) – 3/22/23 – introduced by Representative Costa; 3/22/23 – referred to the Committee on Judiciary and Committee on Transportation and Infrastructure; 3/23/23 – referred to the Subcommittee on Coast Guard and Maritime Transportation (no action since 3/23/23)

Ocean Shipping Reform Implementation Act (HR 1836) – 3/28/23 – introduced by Representative Johnson; 3/28/23 – referred to the House Committee on Transportation and Infrastructure; 3/29/23 – referred to the Subcommittee on Coast Guard and Maritime Transportation; 5/23/23 – reported out of the Subcommittee on Coast Guard and Maritime Transportation and the

Committee on Transportation and Infrastructure; 9/26/23 – Amended version reported out of the Committee on Transportation and Infrastructure and placed on the House Calendar for debate and vote (no action since 9/26/23)

Stop Harboring Iranian Petroleum (SHIP) Act (S 1829/HR 3774) – 6/6/23 – Senate version introduced by Senator Rubio (no action since 6/6/23); 5/31/23 – House version introduced by Representative Lawler; 5/31/23 – referred to Committee on Foreign Affairs and Committee on the Judiciary; 10/19/23 – reported out of the Committee on Foreign Affairs; 11/1/23 to 11/3/23 – debate and vote in House (passed); 11/6/23 – received in the Senate for further action (no action since 11/6/23)

EPA Supplemental Notice of Proposed Rulemaking - Vessel Incidental Discharge National Standards of Performance (“the EPA VIDA Regulations”)
(Federal Register October 18, 2023, pgs 71788-71812)

As noted in last month’s update, after almost three years after publication of its proposed rule, EPA finally published its supplemental notice of proposed rulemaking on the regulations required by the Vessel Incidental Discharge Act (VIDA). CSA will be submitting comments before the mid-December deadline. Our comments will be based on points identified in our analyses sent out previously and include:

1) Ballast Water - Proposed Numeric Ballast Water Discharge standard and Newly Acquired Ballast Water Management System Type-Approval Data

The SNPR contains an extensive discussion on whether the current ballast water discharge standard (the same as the IMO BW Convention) should be made more stringent. The standard must represent the best available technology (BAT) and this analysis was conducted using USCG supplied data to determine the current levels of performance of existing installed systems. EPA concluded that review of this data did not suggest that a more stringent discharge standard was possible and that there is a need for multiple types of ballast water management system options due to the variability of vessel operating profiles, voyage characteristics and water characteristics of ports in which they call. EPA’s final conclusion was to retain the BW discharge standard as originally proposed in the 2020 proposed rule (equal to the IMO BWM Convention discharge standard). Comments are invited on this decision in support or opposition to the EPA conclusions.

Recommended position: Strongly support EPA’s decision to retain the discharge standard in the 2020 proposed rule which is equivalent to the IMO BW Convention discharge standard, as the

best available technology (BAT). Supporting points include notes of existing problems with currently installed systems, the IMO experience building stage is ongoing, and issues associated with challenging water quality in certain ports.

2) Ballast Water/Ballast Tanks – Best Management Practices for Ballast Water Uptake

The current VGP and the IMO BW Convention contain provisions for vessel operators to minimize or avoid uptake of ballast water in (a) areas known to have infestations or populations of harmful organisms and pathogens (toxic algal blooms) (b) areas near sewage outfalls (c) areas near dredging operations (d) areas where tidal flushing is known to be poor or times when tidal stream is known to be turbid (e) in darkness when bottom-dwelling organisms may rise in the water column (f) where propellers may stir up the sediment and (g) areas with pods of whales, convergence zones, and boundaries of major currents. The 2020 EPA proposed rule excluded these provisions based on the fact that these measures are not practical to implement or enforce because these conditions are usually beyond the control of the vessel operator as well as the fact that these unique local conditions are generally unknown by the vessel operator and there are no local points of contact to provide information on when these conditions exist. EPA is now proposing in this SNPR to include these provisions and include their uptake practices and measures to minimize/eliminate uptake in these situations in the vessel's ballast water management plan. Comments are invited on this decision to include these provisions in the final regulations.

Recommended position: Do not support inclusion of these provisions in the final regulations due to (1) the inability of a vessel operator in most cases to know of these conditions in a given port and (2) the inability of a vessel operator to delay ballast water uptake during normal operations e.g. cargo discharge in port, vessel requires ballast before departure to ensure safe maneuvering of the vessel. Fallback position if EPA decides to include these provisions is wording that requires vessel operator to include these considerations in their ballast water management plan and conduct BW uptake accordingly where local information on these conditions is available and it is safe and practical to take them into account when conducting BW uptake operations.

3) Ballast Water/Ballast Tanks – Equipment Standard for New Lakers

EPA is proposing to include a BW management equipment standard for "new" Lakers where a "new Laker" is defined as a vessel over 3000 GT

constructed after the USCG regulations become final. These provisions would not be applicable to “existing” Lakers due to the fact that retrofitting existing Lakers would not be cost effective. EPA’s reasoning behind this proposal is that a BW management equipment standard (versus application of a discharge standard) would represent an incremental improvement over no BW management systems requirements. It should be noted that CSA has few members operating Lakers, and the Lake Carriers Association represents all US flagged Lakers.

Recommended position: Defer to and support the comments which will be submitted by the Lake Carriers Association.

4) Biofouling - Hulls and Associated Niche Areas

The 2020 proposed rule included provision for vessels to develop and follow a biofouling management plan and specific in-water equipment and system cleaning protocols with regards to hull and niche areas. This SNPR adds to these requirements as follows:

- Addition of definitions for “passive discharge of biofouling” and “active discharge of biofouling”
- Delineation between macrofouling and microfouling
- “Passive discharge of biofouling” would be regulated under these regulations as incidental to the normal operation of a vessel
- “Active discharge of biofouling” would include intentional cleaning of a vessel hull and niche areas and would be covered under the Clean Water Act’s (National Pollutant Discharge Elimination System (NPDES) permitting program which would require contractors which engage in in-water hull cleaning to apply for and obtain an NPDES permit
- Discharge from in-water cleaning of macrofouling without capture would be prohibited
- Discharge requirements for in-water cleaning of microfouling of vessel hulls and associate niche areas would be established e.g., in-water cleaning of microfouling would be permitted without capture providing the discharge standards are met
- Hulls and niche areas to be managed to minimize macrofouling e.g., through cleaning of microfouling and microfouling
- Cleaning must minimize damage to the anti-fouling coating and must comply with coating manufacturers’ instructions

Recommended position: Support most new proposals but stress the need for clear language in new definitions so that industry understands the compliance structure relative to passive and active biofouling. The one objection we should make is EPA’s

proposal to include active biofouling under the Clean Water Act NPDES program as if it is left to be regulated under the VIDA regulations, it would preempt states from creating different or more stringent standards which could be allowed under the NPDES program. Hull and niche area inspection and cleaning requirements should be aligned to the extent possible with the current class survey inspection schedules with particular focus on when vessels will be in drydock, with the exception of special circumstances where an in-water inspection identifies significant accumulation of macro fouling.

5) Graywater

- The 2020 proposed rule requires that graywater discharge from any new vessel of 400 gross tons would be prohibited unless the discharge meets numeric standards for fecal coliform, biochemical oxygen demand, suspended solids, pH, and residual chlorine
- The SNPRM proposes to limit this prohibition of graywater discharge only to new vessels of 400GT and above that have a capacity of fifteen or more people and provide overnight accommodations for that capacity, based on the recognition that the graywater discharges for less populated vessels are relatively insignificant compared to vessels carrying larger numbers of people
- EPA notes two available technologies for the onboard management of graywater (1) installation of an advanced wastewater treatment system or (2) retention on board with discharge to shore from onboard holding tanks
- EPA is soliciting comment on this new proposal which would exempt graywater discharges from the discharge prohibition for a vessel of 400 GT and over that carry and provide overnight accommodations for less than 15 people
- EPA is also soliciting comment on whether vessels which do not meet the exemption criteria and thus would have to comply with the discharge standard, should be required to install sufficient holding tanks to store graywater in cases where an advanced wastewater system is not installed

Recommended position: Support exemption which would permit untreated graywater discharge for vessels which carry less than 15 persons and contain overnight accommodations. Support requirement to install holding tank capacity only for new vessels.

Certificate of Compliance Exam Delays

For a number of years, industry has been enduring delays in scheduling certificate of compliance (COC) exams in US ports, particularly those in the US Gulf of Mexico. After extensive discussions with both local USCG and USCG HQ personnel, it is evident that USCG does not have the statutory authority to adjust their current COC inspection requirements without statutory authority. With thanks to the Lone Star Harbor Safety Committee, a briefing paper has been prepared to serve as an advocacy document in our discussions with USCG and Members of Congress. In particular, the industry agrees that the current statute should be amended to (1) amend the COC certificate from a 2 year certificate to a 5 year certificate, subject to USCG discretion (2) allow the USCG COC program to convert to a risk-based program for all tank vessels and (3) the current annual exam frequency should be replaced with a USCG risk-based methodology without cargo restrictions imposed for low risk vessels. This proposed risk based approach is consistent with the current risk based approach being used for port state control inspections and would free up USCG inspection resources to focus on medium and high risk vessels as well as reducing the significant commercial impacts to trade and shipowners currently being encountered with the current system. The industry is working with the USCG and Members of Congress to include necessary text in pending legislation and will advise as new developments occur. A copy of the white paper is available at the link below.

<https://lonestarihsc.org/2023/11/08/certificate-of-compliance-white-paper-now-available/>

North Atlantic Right Whale Vessel Strike Risk Reduction Technology Workshop

NOAA Fisheries is convening a North Atlantic Right Whale Vessel Strike Risk Reduction Technology Workshop to explore and promote new technologies to reduce the risk of vessel strikes. The workshop will be held on March 5 – 7 2024 in Arlington, Virginia. NOAA is investigating options to foster the research, development, testing, and operationalization of innovative tools and management practices to offer mariners additional options for reducing lethal collisions with whales.

Vessel traffic along the U.S. East Coast is growing with increasing commercial, industrial (offshore wind), and recreational use. NOAA strives to be on the forefront of vessel strike mitigation. NOAA invites managers, researchers, device manufacturers, whale experts, commercial, recreational and industry representatives, conservation advocates, and members of the public to attend the workshop. Participants will promote ideas, technological advancements, and mitigation strategies that if operationalized and implemented, have the potential to substantially reduce risk of vessel collisions with right whales. Working

collaboratively with mariners, industry, and technology and engineering firms is essential to ensuring the conservation of right whales in these busy waters.

To pre-register for the meeting, please complete attendee information at https://docs.google.com/forms/d/e/1FAIpQLSfzPtkGbDQGC_mcoH9czXMeFCpnXNH0IFdT6U10WpZRvoTFCg/viewform

U.S. Maritime Alerts

U.S. Maritime Alerts below for reference regarding the increased risk to commercial vessels.

Full Alert is available by clicking the link here:

[US Maritime Alert 2003-006A - Incidents and threats to commercial shipping in the Indian Ocean](#)

Full Alert is available by clicking the link here:

[US Maritime Alert 2003-005A- Hijacking of the Galaxy Leader](#)

