

MONTHLY REPORT for ICS

December 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.

References to legislation may be found at <https://www.congress.gov> at the center of the page.

Year-End Legislative Status

As provided in last month's report, a number of maritime related pending bills are awaiting action in the US Congress. It is important to note that a number of Members of Congress are looking at possible legislative proposals to reinvigorate the US flag fleet for national security and economic purposes but other than the proposal directly below (Energizing American Shipbuilding Act), other proposals currently under discussion have not been formally introduced. In December, two new maritime related bills have been introduced which are summarized below. An updated list of the bills noted in last month's report are also included at the end of this section.

Energizing American Shipbuilding Act of 2023 (S 3467; companion bill in House not yet numbered or published) – introduced on December 12, 2023, by Senator Wicker (LA) and referred to the Senate Banking Committee, this bill would require US built, US flag vessels to transport a certain percentage of US LNG and crude oil exports. For LNG exports, the percentages to meet these requirements would increase over time as follows:

- 7 calendar years after the calendar year in which the bill is enacted: 2% or more
- 8-9 calendar year: 3% or more
- 10-11 calendar year: 4% or more
- 12-13 calendar year: 6% or more
- 14-15 calendar year: 7% or more
- 16-17 calendar year: 9% or more
- 18-19 calendar year: 11% or more
- 20-21 calendar year: 13% or more
- 22 calendar year and all years after: 15% or more

For crude oil exports, the percentages to meet these requirements would increase over time as follows:

- 7 calendar years after the calendar year in which the bill is enacted: 3% or more

- 8,9,10 calendar years: 6% or more
- 11, 12, 13 calendar years: 8% or more
- 14 calendar year and all years after: 10% or more

For a vessel to qualify, it must be US flagged and any shipyard work including retrofitting must be done in a US shipyard.

The sponsors note the need to expand the US domestic shipbuilding industry and the US flag shipping fleet for national security and economic purposes. It should be noted that previous attempts to enact similar legislation since first proposed in 1995 and repropoed several times since then, have seen moderate opposition in both the Senate and House of Representatives and was never successfully enacted.

Renewable Fuel for Ocean-Going Vessels Act (HR 6681) - introduced by Representatives Miller-Meeks (IA) and Garamendi (CA) on December 7, 2023, and referred to the House Energy and Commerce Committee. This bill would add "fuel for ocean-going vessels" to the current qualifying fuels used for home heating oil and jet fuel in the existing EPA Renewable Fuel Standard (RFS). This program requires a certain volume of renewable fuel to replace or reduce the quantity of petroleum-based fuels and includes biomass-based diesel, cellulosic biofuel, advanced biofuel, and total renewable fuel. Pathways already approved under this program include ethanol made from sugarcane, jet fuel made from camelina, cellulosic ethanol made from corn stover, compressed natural gas from municipal wastewater treatment facility digesters and others. This proposal is intended to further incentivize the production of renewable fuels for ocean-going vessels as the current program has done for producers of home heating oils and jet fuels.

To qualify under the program the following requirements must be met:

- Biomass-based diesel must meet a 50% lifecycle GHG reduction
- Cellulosic biofuel must be produced from cellulose hemicellulose, or lignin and must meet a 60% lifecycle GHG reduction
- Advanced biofuel can be produced from qualifying renewable biomass (except corn starch) and must meet a 50% GHG reduction
- Renewable (or conventional) fuel typically refers to ethanol derived from corn starch and must meet a 20% lifecycle GHG reduction threshold

These lifecycle GHG reduction comparisons are based on a 2005 petroleum baseline. Obligated parties under the RFS program are refiners or importers of gasoline or diesel fuel. Compliance is achieved by blending renewable fuels into transportation fuel, or by obtaining credits ("renewable identification numbers" or "RINS") to meet an EPA-specified renewable volume obligation (RVO). RINS are the credits that obligated parties use to demonstrate compliance with the standard. Obligated parties must obtain sufficient RINS for each category to demonstrate compliance with the annual standard. Regarding RINS:

- RINS are generated when a producer makes a gallon of renewable fuel
- Obligated parties use RINS to demonstrate compliance at the end of each compliance year
- RINS can be traded between parties
- Obligated parties can buy gallons of renewable fuel with RINS attached or can also buy RINS on the market
- Obligated parties can carry over unused RINS between compliance years. Compliance deficits can also carry over in the next compliance year, but the deficit must be made up in that following compliance year.

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); 11/7/23 – received in the Senate for further action (no action since 11/7/23)

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)

On December 18, 2023, CSA submitted comments to the docket on the above referenced supplemental notice of proposed rulemaking for the vessel incidental discharge national standards of performance. A summary of EPA’s proposed text for each of the 5 issues addressed is followed by our recommended positions in bold text. Based on discussions with EPA, we expect the EPA final regulation to be published no later than the third quarter 2024. At that time, the USCG will have 2 years to finalize their regulations addressing monitoring, compliance, and enforcement. Both the EPA and USCG final regulations will enter into force after the USCG regulations are finalized.

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).

Our position: We 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 note of existing problems with currently installed systems to meet the existing standard, the IMO experience building stage which is collecting compliance information and challenges, and issues associated with challenging water quality in certain ports. We further support the conclusion that multiple types of BW treatment systems are necessary to provide the necessary technology to conduct ballast water management by vessels in a diverse set of vessel operating profiles, voyage characteristics and water quality. We agree that no one BW management system

is capable of conducting BW management across all operating conditions.

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

Our position: We 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. If EPA decides to include these provisions in the final regulatory text, we suggest regulatory text that requires vessel operators 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. It is also noted that vessels engaged in international trade will already need to include these considerations in the ballast water management plan as required by the Ballast Water Convention.

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.

Our position: CSA supports in full the comments submitted by the Lake Carriers Association which:

- **Opposes the proposal to impose an equipment standard for new Lakers as Best Available Technology Economically Achievable (BAT) because no statutory authority or legal precedent exists for such action/decision.**
- **Opposes the proposal to incorporate binational consistency as another factor to be considered by EPA because it is unprecedented and contrary to the supplemental notice’s assertion, given the regulated community for which the proposed new Laker requirement apply did not request that it be considered.**
- **Opposes the proposal to impose an equipment standard for new Lakers due to the failure to identify the ongoing ballast water management system operational issues on Lakers and in the Great Lakes environment and account for the USCG type-approval timeline in EPA’s assumption that ballast water management systems compatible with Laker operations will be available by the time that the USCG VIDA mandated regulations for implementation, compliance and enforcement enter into force.**

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

Our Position:

- **We support most new proposals, but we stress the need for clear language in the new definitions so that the regulated community understands the compliance structure relative to passive and active biofouling.**
- **Our one objection to the proposed text is EPA's proposal to include active biofouling under the Clean Water Act NPDES program while regulating passive biofouling under the VIDA regulations. If active biofouling is covered by the NPDES program (versus VIDA), the requirements imposed by states under their NPDES programs could vary from state to state. If left under the VIDA regulations, the active biofouling requirements would be consistent nationally as VIDA preempts states from creating their own programs.**
- **We also object to EPA's statement that there are no permanent onboard in-water cleaning systems that are commercially available for use. While at this moment in time, this statement is true, there are in water cleaning systems stored onboard and operated by the ship's crew being tested at this time and most certainly will be available by the time the EPA and USCG VIDA mandated regulations enter into force.**
- **We stress that an onboard in water cleaning system is one of the practical solutions the industry will be able to use to avoid macrofouling as it makes it possible for the ship to manage the cleaning of microfouling without being dependent on the availability of shore based in water cleaning systems. Onboard in-water cleaning systems**

should be encouraged as soon as they become commercially available so that timely and effective management of hull and niche areas to minimize macrofouling via aggressive management of microfouling can be realized.

- **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.**
- **We question inclusion of the proposed text that prohibits in-water cleaning on any section of an antifouling coating that shows excessive cleaning actions e.g. brush marks or blistering due to the internal failure of the paint system. The text should be modified to prohibit cleaning only where this condition is able to be observed prior to the in water cleaning due to the fact that where macrofouling occurs, such marks or damages will only be visible after the area has been cleaned. The latter situation should be permitted as long as the waste material is being captured by the in water cleaning system.**

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 15 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

Our position:

- **We support the proposed exemption which would permit untreated graywater discharge for vessels which carry less than 15 persons and contain overnight accommodations but suggest the minimum number of persons be increased to 25. This increase would cover most non-passenger vessels and would not significantly contribute to the load associated with discharges to the waterbody during vessel transit.**
- **We disagree with EPA's assumption that advanced wastewater treatment systems are a compliance option for vessels carrying 25 people or less because these advanced wastewater treatment systems do not operate efficiently with lower flows associated with smaller crews, thus leaving the only compliance option as retention on board.**
- **We support the proposed requirement to install holding tank capacity only for new vessels which carry crews over 25 people as retrofit of holding tanks for existing vessels may be difficult, if not impossible, to integrate into an existing vessels space availability, taking into account vessel stability requirements.**
- **Although outside the scope of this supplemental notice of proposed rulemaking, we believe the ideal solution to graywater discharges including holding tank requirements and/or application of other existing technologies that exist in land-based industries, rests with the International Maritime Organization (IMO) and support the engagement of the US delegation at IMO toward production of an internationally agreed resolution on this issue.**

California Marine Invasive Species Program – Reminder for Annual and Voyage Reporting Requirements

The following information was received from the California State Lands

Commission regarding their requirements for the annual vessel reporting form and the ballast water management voyage reporting requirements. Vessels calling in California reports are required to timely file these reports as described in the information provided below.

Marine Invasive Species Program Annual Vessel Reporting for Submission Requirement

The Marine Invasive Species Program Annual Vessel Reporting Form (AVRF) must be submitted one per calendar year and at least 24 hours prior to a vessel's first arrival at a California port. The AVRF must be submitted through the web-based platform <https://www.MISP.IO>. Note that the AVRF can be submitted earlier during the calendar year (e.g. submitted in January for a first arrival in March), if desired, and can be submitted by anyone affiliated with the vessel (e.g. ownership, management, crew, agent). Vessel owners or operators that are unable to submit the AVRF via MISP IO due to logistic or technological challenges should contact the Marine Invasive Species Program at cslc.misp@slc.ca.gov as soon as possible to inquire about alternatives for AVRF submission.

Ballast Water Management Report Submission Requirements

All vessels that arrive at California ports must submit the Ballast Water Management Report (BWMR) 24 hours prior to arrival at each port in California. If a vessel's voyage is less than 24 hours, the report shall be submitted upon departure from the last port of call prior to arrival. If ballast water management or discharge information changes for an arrival, a corrected form must be submitted.

Vessels moving from one California port to another are required to file a separate BWMR for each port arrival. For reporting purposes, the following places are recognized as separate ports by the Marine Invasive Species Program. All terminals, berths, and anchorages within each port are considered a part of that port. A list of separate ports are as follows: Humboldt Bay Harbor (including Eureka), Port of Sacramento, Port of Stockton, Port of San Francisco including all San Francisco Anchorage locations, Carquinez (including all marine oil terminals and anchorages in the Carquinez Strait, extending east to the Antioch Bridge, Port of Richmond, Port of Oakland, Port of Alameda, Port of Redwood City, Moss Landing Harbor, Monterey Harbor, Santa Barbara Harbor, Port of Hueneme, Marina del Rey Harbor, El Segundo, Los Angeles/Long Beach Port Complex (including all anchorage locations within the breakwater), Avalon/Catalina and Port of San Diego (including Point Loma).

California requires vessels to use the US Coast Guard Ballast Water Management Report (OMB No. 1625-0069) and submit the report to:

Online: <https://MISP.IO>

Email: bwform@slc.ca.gov

Fax: 562-499-6444

Data Summaries

The California State Lands Commission staff has created a vessel traffic and ballast water management data dashboard for public use. The data dashboard is updated quarterly and is found at <https://misp-cslc.hub.arcgis.com/>

Notifications and Alternatives

Vessel owners, operators and agents should direct notification of inoperable ballast water treatment systems, questions about alternative reporting submissions, or questions about the use of the online reporting portal to cslc.misp@slc.ca.gov and staff will respond accordingly. For more information about regulations administered by the Marine Invasive Species Program or the program in general, please visit <http://www.slc.ca.gov/Programs/MISP.html>

