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HARMFUL AQUATIC ORGANISMS IN BALLAST WATER

Proposed unified interpretation of regulations E-1.1.1 and E-1.1.5 of the BWM Convention

Submitted by Republic of Korea and IACS

SUMMARY

Executive summary: This document proposes a unified interpretation of regulations E-1.1.1 and E-1.1.5 of the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* concerning a common date to be used for determining the implementation of mandatory commissioning testing of individual ballast water management systems in accordance with resolution MEPC.325(75) and taking into account BWM.2/Circ.70/Rev.1

Strategic direction, if applicable: 6

Output: 6.1

Action to be taken: Paragraph 11

Related documents: None

Introduction

1 The Marine Environment Protection Committee (MEPC), at its seventieth session, agreed that compliance with regulation D-2 of the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (BWM Convention) should be validated in conjunction with the commissioning testing of an individual ballast water management system (BWMS).

2 MEPC 73 approved the *Guidance for the commissioning testing of ballast water management systems* (BWM.2/Circ.70), stipulating that the performance of the BWMS newly installed on ships should be validated by the Administrations or recognized organizations acting on their behalf by demonstrating that its mechanical, physical, chemical and biological processes are working properly before issuing the International Ballast Water Management Certificate (IBWMC). The Committee further invited interested Parties to submit to MEPC 74 concrete proposals for an amendment to regulation E-1 of the BWM Convention, considering that there was no legal basis either in the BWM Convention or the BWMS Code to require a mandatory commissioning testing for ships with newly installed BWMS.

3 MEPC 74 approved draft amendments to regulation E-1 of the BWM Convention concerning a mandatory requirement on the commissioning testing of BWMS with a biological test and endorsed the view that the commissioning testing should begin as soon as possible, taking into account BWM.2/Circ.70. At the same time, the Committee further endorsed the view that the commissioning testing should not be applicable to ships that had already installed a BWMS and were certified for compliance with regulation D-2 of the BWM Convention.

4 MEPC 75 adopted resolution MEPC.325(75) on draft amendments to regulation E-1 of the BWM Convention concerning a mandatory requirement on commissioning testing of BWMS and approved BWM.2/Circ.70/Rev.1 with the updates including the source and quality of the uptake water, the level of detail and the objective of the analysis, the size class to be tested, and the volume of the sample to be taken during testing. In light of this, the amendments to regulation E-1 of the BWM Convention do not explicitly provide an exact timing for the mandatory implementation of the commissioning testing of individual BWMS, whereas those amendments will enter into force on 1 June 2022.

Discussion

5 Regulations E-1.1.1 and E-1.1.5 of the BWM Convention, as amended by resolution MEPC.325(75), do not provide an exact timing for the mandatory implementation of commissioning testing of individual BWMS installed on board ships. In consequence, ship owners, ship builders, BWMS manufacturers and related stakeholders have been raising different approaches and interpretations as to whether mandatory testing should be conducted based on the "actual completion date" of the applicable surveys for installation of BWMS, "construction (the keel is laid) date" on or after 1 June 2022, "date of reception for a survey application" for installation of BWMS or "date of commencement of the commissioning testing".

6 In this regard, the co-sponsors considered different possible approaches and interpretations of the timing for the mandatory commissioning testing of individual BWMS derived from the amendments, and summarized as follows:

- .1 from the perspective of the initial/additional survey relating to regulations E-1.1.1 and E-1.1.5 of the BWM Convention:
 - .1 for newly built ships seeking the first IBWMC or retrofit ships seeking the first IBWMC with certification to regulation D-2, IBWMC initial/additional survey, which is completed on or after 1 June 2022, shall confirm that the commissioning testing has been conducted. The only guidance now relevant to the commissioning testing is in BWM.2/Circ.70/Rev.1, unless the Administration specifies otherwise; and
 - .2 if the initial/additional survey is completed before 1 June 2022, the commissioning testing remains optional or as directed by the ship's flag Administration;
- .2 from the perspective of the completion date of the commissioning testing/"date installed" on the IBWMC:
 - .1 for the purpose of completing the IBWMC in accordance with BWM.2/Circ.66/Rev.1, the date when the commissioning testing has been completed in accordance with section 8 of the BWMS Code (resolution MEPC.300(72)) should be used as "date installed"

in the certificate. However, the only guidance now relevant to the commissioning testing is in BWM.2/Circ.70/Rev.1, unless the Administration specifies otherwise;

- .2 the completion date of the commissioning testing, in accordance with annex 4 to the HSSC Guidelines 2019 (resolution A.1140(31)) for initial survey, paragraph 1.1.4.1, is a satisfactory survey and when the IBWMC should be issued;
- .3 if the completion date of the commissioning testing on the IBWMC will be before 1 June 2022, a commissioning biology test is not mandatory; and
- .4 if the completion date of the commissioning testing on the IBWMC will be on or after 1 June 2022, a test taking into account BWM.2/Circ.70/Rev.1 is mandatory. In case a commissioning testing taking into account BWM.2/Circ.70/Rev.1 is expected to be mandatory, shipyards may consult with the Administration to seek acceptance for an earlier date for the BWMS commissioning, before 1 June 2022.

7 In this regard, the common elements of the above understanding in relation to the mandatory implementation of the commissioning testing are summarized as follows:

- .1 the commissioning testing of BWMS taking into account BWM.2/Circ.70/Rev.1 should be regarded as mandatory if the initial or additional survey subject to the new installation of BWMS on board is completed on or after 1 June 2022;
- .2 if the initial or additional survey subject to the new installation of BWMS on board is completed before 1 June 2022, the commissioning testing of individual BWMS remains optional or at the discretion of the Administration(s); and
- .3 in determining the date when mandatory commissioning testing should be conducted, there is no need to distinguish new and existing ships.

8 Moreover, with respect to new ships under construction or existing ships retrofitting a BWMS on board, in a case where the commissioning testing of BWMS is scheduled to be done before 1 June 2022, however due to delays the testing will be completed on or after 1 June 2022, consultation with the Administration should be made in order to avoid any future implications.

9 Given the view and consideration described above, the co-sponsors consider that the timing for mandatory implementation of the commissioning testing in accordance with regulations E-1.1.1 and E-1.1.5 of the BWM Convention, as amended by resolution MEPC.325(75), should be based on the actual "completion date" of the applicable surveys following the installation of BWMS on board new and existing ships. It would be highly beneficial for a reasonable and consistent implementation of the newly introduced requirements on the commissioning testing with a biological test taking into account BWM.2/Circ.70/Rev.1. It is also the most suitable way to prevent misunderstanding as to when the commissioning testing with a biological test will be mandatory.

Proposal

10 The co-sponsors have developed a draft unified interpretation to clarify the timing for mandatory implementation of the commissioning testing of individual BWMS, as shown in the annex to this document.

Action requested of the Committee

11 The Committee is invited to consider the draft unified interpretation to regulations E-1.1.1 and E-1.1.5 of the BWM Convention, as provided in the annex to this document, and take action as appropriate.

ANNEX

DRAFT UNIFIED INTERPRETATION TO REGULATIONS E-1.1.1 AND E-1.1.5 OF THE BWM CONVENTION

Regulation E-1.1.1 reads as follows:

"An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the ballast water management plan required by regulation B-1 and any associated structure, equipment, systems, fittings, arrangements and material or processes comply fully with the requirements of this Convention. This survey shall confirm that a commissioning test has been conducted to validate the installation of any ballast water management system by demonstrating that its mechanical, physical, chemical and biological processes are working properly, taking into account the guidelines developed by the Organization*."

Regulation E-1.1.5 reads as follows:

"An additional survey, either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. When an additional survey shall confirm that a commissioning test has been conducted to validate the installation of the system by demonstrating that its mechanical, physical, chemical and biological processes are working properly, taking into account the guidelines developed by the Organization*."

Interpretation

Irrespective of new ships under construction subject to regulation E-1.1.1 or existing ships retrofitting BWMS(s) on board subject to regulation E-1.1.5, the commissioning testing of individual BWMS taking into account the guidelines developed by the Organization* should be conducted if the initial or additional survey is completed on or after 1 June 2022. If the initial or additional survey is completed before 1 June 2022, the commissioning testing of individual BWMS remains subject to the specific requirements of the Administration(s).

* Refer to the *2020 Guidance for the commissioning testing of ballast water management systems* (BWM.2/Circ.70/Rev.1), as amended.