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Agenda item 2

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## HARMFUL AQUATIC ORGANISMS IN BALLAST WATER

### Clarification of resolution MEPC.253(67) on Measures to be taken to facilitate entry into force of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004

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#### SUMMARY

*Executive summary:* The co-sponsors believe that positive progress was made at MEPC 67 towards addressing the serious concerns of stakeholders with respect to the implementation of the Ballast Water Management Convention as detailed in document MEPC 67/2/6 (ICS et al.). Noting the adoption by the Committee of resolution MEPC.253(67), additional clarification from the Committee is sought on the meaning and full intent of paragraph 3 of the resolution that concerns the treatment of type approved ballast water management systems installed prior to the application of the revised Guidelines (G8). The co-sponsors discuss the need to provide assurance to shipowners who install "first generation" ballast water management systems, which are operated correctly and maintained in good condition, that they will not be forced to replace these systems or be otherwise unfairly treated due to any periodic lack of efficacy for reasons outside of their control or be required to replace such systems following subsequent application of the revised Guidelines (G8). The co-sponsors provide their understanding of paragraph 3 of resolution MEPC.253(67) and seek the Committee's concurrence.

*Strategic direction:* 2

*High-level action:* 2.0.1

*Planned output:* 2.0.1.2

*Action to be taken:* Paragraph 11

*Related documents:* MEPC 67/2/6 and MEPC 67/20

## Background

1 At the sixty-seventh session of the Marine Environment Protection Committee action was taken to address the genuine concerns, detailed in document MEPC 67/2/6 (ICS et al.), of stakeholders in relation to the implementation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (the Convention). Most notably the Committee adopted resolution MEPC.253(67) on *Measures to be taken to facilitate entry into force of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004*. In summary, resolution MEPC.253(67) requires the following:

- .1 the immediate commencement of a comprehensive review of the *Guidelines for approval of ballast water management systems (G8)*;
- .2 Parties to the Convention to ensure the existing Guidelines (G8) are fully adhered to by approved test facilities until the application of the revised Guidelines (G8);
- .3 that shipowners that have installed type approved ballast water management systems prior to the application of the revised Guidelines (G8) should not be penalized; and
- .4 port States should refrain from applying criminal sanctions or detaining a ship, based on sampling during the trial period described in the report of BLG 17 (BLG 17/18, annex 6) associated with the *Guidance for sampling and analysis for trial use in accordance with the BWM Convention and Guidelines (G2) (BWM.2/Circ.42)*.

2 In addition, resolution MEPC.253(67) noted, and therefore added weight to, resolution MEPC.252(67) on *Guidelines for port State control under the BWM Convention* which was also adopted at MEPC 67. The latter resolution details the envisaged practical "four-stage inspection" approach for port State control. If followed, the Guidelines for port State control should ensure that ballast water sampling and analysis, if conducted at all, is carried out at an appropriate stage of an inspection. This positive action by the Committee is believed to have removed one major obstacle to the successful implementation of the Convention.

### **Comments relating to MEPC 67 and the initial work of the correspondence group for the review of the Guidelines (G8)**

3 Although it is still early in the review of the Guidelines (G8), as required by the former resolution, progress so far is believed to be promising and, if continued, should result in robust guidelines for the approval of ballast water management systems. When applied, the revised Guidelines (G8) should deliver ballast water management systems in which shipowners can have added confidence in terms of efficacy to treat ballast water during normal worldwide operations.

4 Co-sponsors note with interest that, in addition to the six issues originally raised by the shipping industry in document MEPC 67/2/6 to be addressed as a minimum in the review of the Guidelines (G8), a further 30 plus items have been brought forward for consideration in the review by Member States. Whilst the extended list of issues is welcomed in terms of ensuring the robustness of the future revised Guidelines (G8), it does however add, in some instances, to the doubts about the approval of systems in accordance with the existing Guidelines (G8) and in particular adds to concerns for the efficacy of those "first generation" systems as to whether they will be able to treat ballast water reliably to consistently meet the ballast water performance standard described in regulation D-2 of the Convention. Some of the additional issues raised relate to the following:

- .1 independence of approval testing from system manufacturers;
- .2 deviations from and use of standard testing methods;
- .3 adequacy of reporting from land based and ship based testing;
- .4 differences in Member State approval protocols;
- .5 scaling of systems;
- .6 appropriate quality certification of testing facilities;
- .7 ballast water holding times following treatment during testing; and
- .8 sampling and collection methods during shipboard testing.

5 The Committee may recall that as part of the discussion contained in document MEPC 67/2/6 relating to building confidence in the Convention, the co-sponsors, stated the following:

- .1 "It is now recognized by all stakeholders that there is genuine uncertainty for the consistent performance of type approved ballast water management systems that have been installed or are being considered for installation by shipowners to meet the precise D-2 standard under all operating conditions."
- .2 "The industry is committed to the environmental goals of the Convention."
- .3 "It is essential to avoid any discouragement to fit ballast water management systems before the carriage requirement becomes mandatory and therefore it should be agreed that "first generation" type approved systems, installed in good faith prior to the Convention's entry into force and before Guidelines (G8) have been reviewed and the revised guidelines applied, shall be considered acceptable (grandfathered) for the life of the ship. For port State control purposes a new category of "gross non-compliance" should be defined for application to these systems."
- .4 "First generation" equipment should be recognized as such, valuing the contribution of important information relating to the operational performance of early installations. Such information is invaluable to facilitate improvements in the effectiveness of later generations of systems."
- .5 "The greater good for environmental protection will undoubtedly be achieved by facilitating the Convention's entry into force in a practical manner. If there are occasions when the D-2 standard is not fully met, there will nevertheless remain a net benefit to environmental protection and the control of invasive risk. This will be a far preferable situation to that currently existing."

#### **Clarification of resolution MEPC.253(67)**

6 In document MEPC 67/2/6, a draft MEPC resolution was provided with the following operative paragraph:

"AGREES that "first generation" type approved ballast water management systems, installed in good faith prior to the Convention entering into force and before the Guidelines (G8) have been reviewed and revised Guidelines (G8) adopted, should

be considered acceptable (grandfathered) for the life of the ship, and for port State control purposes a new category of "gross non-compliance" will be defined for application to these systems, in order to allow for some variation in treatment efficacy during normal operation."

7 The proposed operative wording, above, provides the necessary assurances to "early movers" i.e. shipowners who have or are intending to install "first generation" type approved ballast water management systems prior to the application of the revised Guidelines (G8). The Committee recognized following discussion in plenary (see document MEPC 67/20 paragraphs 2.27 and 2.29) that there was a "need to avoid disadvantages for proactive shipowners" and "agreed that early movers should not be penalized" resulting in an instruction to the Ballast Water Review Group (BWRG) "to finalize the draft MEPC resolution set out in the annex to document MEPC 67/2/6, based on the agreement to revise Guidelines (G8) and not to penalize early movers". The Committee subsequently adopted MEPC.253(67) which includes the following wording in operative paragraph 3 of the resolution:

"AGREES that shipowners that have installed type approved ballast water management systems prior to the application of the revised Guidelines (G8), should not be penalized."

8 Continuing with the excellent spirit of cooperation evident at MEPC 67, which resulted in the good progress made towards facilitating the entry into force of a Ballast Water Management Convention that is fair and effective for all, the co-sponsors seek clarification from the Committee as to the meaning and full intent of operative paragraph 3 of resolution MEPC.253(67). The objective of this clarification is to ensure that there is a common agreed understanding amongst all stakeholders of this paragraph. This is necessary to allay the fears of some IMO Member States and the shipping industry concerning the treatment of those "early movers" that have installed type approved ballast water management systems prior to the application of the revised Guidelines (G8), systems referred to elsewhere as "first generation" ballast water management systems.

9 Detailed below is the understanding of the co-sponsors as to the meaning and full intent of operative paragraph 3 of resolution MEPC.253(67):

- .1 shipowners who have installed, prior to the application of the revised Guidelines (G8), ballast water management systems approved in accordance with the existing Guidelines (G8) i.e. "first generation" ballast water management systems, shall not be required to replace these systems due to the application of the revised Guidelines (G8) with systems approved in accordance with the revised Guidelines (G8);
- .2 shipowners who have installed, maintained and operated correctly "first generation" ballast water management systems shall not be required to replace these systems, for the life of the ship, due to periodic lack of efficacy for reasons beyond the control of the shipowner and ship's crew;
- .3 where despite the shipowner having installed, maintained and operated correctly a "first generation" ballast water management system and for reasons beyond the control of the shipowner and ship's crew, the ballast water being discharged is found not to comply with the discharge standards laid down in regulation D-2 of the Convention, the port State should not detain the ship, fine or take criminal action against the shipowner or ship's crew. The port States should in such cases work with the shipowner on a case by case basis to agree on an appropriate solution to facilitate discharge of the ship's ballast water.

**Proposal**

10 The co-sponsors request the Committee to consider the co-sponsors' understanding of the meaning and full intent of operative paragraph 3 of resolution MEPC.253(67) as described in paragraphs 9, 9.1, 9.2 and 9.3 above and taking into consideration the previous decision of the Committee "that early movers should not be penalized" is asked to concur with the co-sponsors understanding.

**Action requested of the Committee**

11 The Committee is invited to:

- .1 consider and concur with the co-sponsors' understanding of the meaning and full intent of operative paragraph 3 of resolution MEPC.253(67) as described in paragraphs 9, 9.1, 9.2 and 9.3 above; and
  - .2 take action as deemed appropriate to communicate the understanding of the Committee.
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