



# CHAMBER OF SHIPPING OF AMERICA

## MONTHLY REPORT FOR BIMCO

JANUARY 2017

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**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 new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <http://thomas.loc.gov/> by entering the bill number (HR 802, S 2841) in the "search bill text" block found at the center of the page.

### CSA Spring Member Meetings

Our Maritime Policy Committee, Operations Committee and Board of Directors meetings will be held March 23, 2017 (Policy and Ops) and March 24, 2017 (BOD) at the Stamford Hilton Hotel and conference center in conjunction with the Connecticut Maritime Association's annual conference in Stamford, Connecticut.

Register: [Register your attendance by clicking this link](#)

### Status of the USCG Ballast Water Extension Program

As most are aware, the USCG has issued US type approvals to three (3) ballast water treatment systems in December 2017. As a result of these type approvals, vessels can no longer request an extension based on the absence of US type approvals. While the extension program is alive and well, individual vessels will now need to provide documentation that these systems are not fit for purpose on the vessel seeking the extension or if fit for purpose, the requested extension is justified based on nonavailability of a system or inability of the vessel to secure drydock space before its current implementation date. RADM Paul Thomas has provided an excellent summary of the USCG's perspective on the extension program as it now stands given the existence of the three US type approvals. The summary is available at:

[http://mariners.coastguard.dodlive.mil/2017/01/24/ballast-water-management-beyond-type-approval/?utm\\_source=feedburner&utm\\_medium=email&utm\\_campaign=Feed%3A+MaritimeCommons+%28Maritime+Commons%29](http://mariners.coastguard.dodlive.mil/2017/01/24/ballast-water-management-beyond-type-approval/?utm_source=feedburner&utm_medium=email&utm_campaign=Feed%3A+MaritimeCommons+%28Maritime+Commons%29)



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### **Status of the Vessel Incidental Discharge Act (VIDA) in the US Congress**

In January 2017, a number of Senators introduced S. 168, the Commercial Vessel Incidental Discharge Act (CVIDA) with text closely mirroring that of the VIDA legislation which was worked through the last Congress. As you know from prior reports, despite a great deal of advocacy efforts, VIDA did not pass the last Congress. We now have another opportunity to push this legislation in the new Congress. The bill when introduced, was referred to the Senate Commerce Committee and was passed out of the Committee by a voice vote with little debate. The coalition will work toward moving S. 168 through the Senate as well as assuring that companion legislation is introduced in the House of Representatives. In the meantime, under the initiative of the American Waterways Operators, an industry letter is being sent to Senate leadership to demonstrate the broad stakeholder support which was evidenced by the over 200 signatories to a similar letter submitted to the last Congress. Partial text of that letter is provided below:

**[BEGIN QUOTE]** We are writing to express our strong support for S.168, the Commercial Vessel Incidental Discharge Act (CVIDA). Our organizations represent U.S. and international vessel owners and operators; fishing vessel, passenger vessel and charter boat operators; labor unions; marine terminals and port authorities; national business organizations; and industries that rely on maritime shipping to transport essential cargoes in domestic and international commerce.

We applaud Sens. Roger Wicker (R-MS), Robert Casey (D-PA), Marco Rubio (R-FL), Bill Nelson (D-FL), and John Thune (R-SD) for introducing CVIDA at the beginning of the 115th Congress, and appreciate Sens. Thune's and Nelson's leadership in moving quickly to report the bill out of the Committee on Commerce, Science & Transportation on January 24. CVIDA, which enjoyed broad bipartisan support in both the Senate and the House during the 114th Congress, would eliminate a regulatory burden hindering interstate and international commerce by replacing multiple federal and state regulations with a single national standard for the regulation of ballast water and other discharges incidental to normal vessel operations. The bill would also maintain protective measures jointly undertaken by industry and federal agencies to reduce the movement of invasive species on the navigable waterways.

It is urgent that CVIDA be enacted in 2017. Vessel owners will spend millions of dollars installing onboard equipment to comply with Coast Guard and EPA requirements, but still be at risk of fines and penalties for violating state requirements that cannot be met by existing technology. This overlapping patchwork of federal and state regulations kills jobs, undermines the efficiency of maritime transportation, increases business costs, and places mariners at risk



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of civil and criminal prosecution. It also delays investments in treatment technology that will strengthen environmental protection.

CVIDA would provide vessel owners and mariners with a predictable and transparent regulatory structure in which vessel incidental discharges are regulated and enforced by the U.S. Coast Guard, using as its baseline the ballast water discharge standard that EPA's Science Advisory Board has determined to be the most stringent currently achievable. The bill will ensure the installation of high-performing technologies on commercial vessels, and allows for improvements in the national standard as technology improves. CVIDA also preserves the ability of states to enforce the federal ballast water discharge standard, petition for a higher standard, work with Coast Guard to develop best management practices, and regulate recreational vessels operating in their waters.

In conclusion, S.168 is good for American jobs, good for the economy, and good for our nation's waterways. The bill will restore the efficient and cost-effective movement of marine commerce in the U.S., and we urge its swift passage in the Senate. **[END QUOTE]**

### **Marine Environmental Response Marine Safety Bulletin (MSIB) 02-17** **Clarification of Issues Related to the USCG Initiated Remote Access** **and Consultation (RAC) Drills** **January 11, 2017**

It should be recalled that last year, CSA coordinated a coalition of industry parties to address a number of issues found in the newly issued National Preparedness for Response Exercise Program (PREP) guidelines, including what we believed to be a new set of exercises/drills relating to the recently incorporated salvage and marine firefighting (SMFF) requirements. Recently CSA has been contacted by CSA member companies and colleague trade associations about confusion created by the USCG initiation of its RAC drills. As most are aware, the SMFF regulations require vessel response plan (VRP) holders to annually ensure that SMFF resources listed in the VRP are "adequate" to meet the response requirements contained in the USCG regulations. Specifically, 33 CFR 155.4050 outlines the criteria to be used for evaluating "adequacy". The USCG position is that these requirements give them the authority to conduct these exercises, although we can find nothing within the body of the regulations that vests this authority. Text of the referenced CFR section may be downloaded at the hot link here.

<https://www.gpo.gov/fdsys/pkg/CFR-2012-title33-vol2/pdf/CFR-2012-title33-vol2-sec155-4050.pdf>



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In further review of these regulations, it appeared to us that the adequacy verification would be an integral part of VRP plan review by the plan holders and that SMFF resources would be an integral part of existing drill and exercise requirements to which the industry has become accustomed. When the new PREP guidelines were finalized, we noted new provisions which appeared to require a more formal assessment of SMFF resources and annual RAC drills as a stand-alone event. We met with the USCG and advocated that any notification, exercise and/or drill program should integrate all the pieces of the response structure or at least a cohesive component of the plan whether it be a table top or full resource mobilized drill/exercise. We indicated then that exercise of a specific component of the plan without regard to real world implementation of the plan served little value. The USCG explained to us that they had concerns about the real adequacy of SMFF resources (much like they had in the early stages of the OPA 90 implementing regulations regarding traditional spill response resources) and they wanted to conduct assessments on the adequacy of these resources as well as the communications system established between plan holders and their SMFF resources notwithstanding the real world activation of VRP resources via the QI initially and ultimately ending up with the incident management team on a longer term basis.

Recently, the USCG has sent out form letters to selected VRP holders initiating this SMFF adequacy assessment (copy attached below). A great deal of thanks goes to Dave Barry of Gallagher Marine Systems who made the initial contact with USCG (after these letters were sent) to express industry concerns with how the USCG was viewing the SMFF assessment process and the apparent disconnect between this assessment, RACs and the rest of the response structure, including the key role of the QI. CSA also contacted the USCG Office of Response Policy noting our concerns and the need for clarification of what the USCG's expectations are relative to this issue.

Based on these discussions, the USCG issued the above referenced MSIB. Full text of the MSIB can be viewed at the hot link below.

[https://www.uscg.mil/msib/docs/002\\_17\\_1-11-2017.pdf](https://www.uscg.mil/msib/docs/002_17_1-11-2017.pdf)

Several points are worth noting:

- USCG indicates that the assessment will be conducted via email directly to the QI (not the vessel) although it remains to be seen how the role of the QI and the vessel owner/operator will interface during this process
- There will not be a series of phone calls as is typically the case with a real world response scenario
- USCG has distributed the SMFF verification workload for 19 vessels across the January 2017 to July 2017 timeframe and across geographic areas with the intention of not overburdening a particular set of SMFF providers or VRP holders.



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- USCG will provide a scenario package for each vessel selected and define up to 2 locations (less than 12 NM, greater than 50 NM) within a COTP Zone from which to complete the SMFF verification
- The verification does NOT require equipment/resource deployment
- The verification is NOT a GIUE type scenario requiring immediate action or information
- The verification is NOT an exercise which requires months of planning as is the case with comprehensive drills/exercises testing the entire response hierarchy
- The role of the QI is to help facilitate the communication of the verification process with the VRP holder
- USCG notes in spite of the above points, that they will only accept information from the vessel owner/operator for completion of the verification exercise
- Vessel owners/operators will have 21 days from the receipt of the USCG form letter to complete the verification of SMFF resources and submit this data to USCG
- It is allowable to conduct RAC drills integrated with other drill/exercise requirements such that upon completion of the verification, USCG will issue a final letter to the vessel owner/operator providing credits for all requirements fulfilled e.g. resource assessment, QI notification, RAC exercise, GIUE exemption PROVIDED all objectives as listed in the PREP guidelines are met.

A template of the letter being sent by the USCG to select plan holders is found below.

**[BEGIN QUOTE]** This email is in regards to the Coast Guard's Salvage and Marine Firefighting verification efforts upcoming in 2017.

For your awareness, a vessel listed in a vessel response plan managed by your organization has been selected by the Coast Guard to be part of a salvage and marine firefighting verification. This salvage and marine firefighting verification will not involve the deployment of actual resources, but will involve communication between the Coast Guard and your organization, and may include the listed salvage and marine firefighting resource provider in accordance with your vessel response plan.

Request an appropriate point of contact from your organization with whom I will provide additional details for this upcoming salvage and marine firefighting verification.

The point of contact from your organization may contact me directly at [Kevin.c.boyd@uscg.mil](mailto:Kevin.c.boyd@uscg.mil) or 202-372-1226.

The following is a summary introduction of the Coast Guard's 2017 salvage and marine firefighting verification effort:



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### 2017 Salvage and Marine Firefighting Verifications

At the local and national level, both within the Coast Guard and industry, verification efforts continue for the purpose of ensuring compliance with applicable salvage and marine firefighting (SMFF) regulations. Pertaining to the Coast Guard's efforts, verification for compliance with SMFF regulations occurs during actual incidents, drills and exercises, and the review for approval of vessel response plans. As a part of the review for approval of vessel response plans, the Coast Guard will conduct a series of scenario-based SMFF verifications between January and June 2017. Selected vessel owner or operators will be notified of their participation in this verification by the Coast Guard, and will be asked to provide information demonstrating their ability to meet the national planning criteria for all resource-based SMFF services listed in their vessel response plan within a particular Captain of the Port (COTP) Zone. Participating vessels owner or operators will receive credit for all OPA90-required SMFF-related exercises occurring during this verification effort (i.e. qualified individual notification exercise, remote assessment & consultation exercise), and exemption from a government initiated unannounced exercise (GIUE) for up to 36 months upon completion of the verification. **[END QUOTE]**

Given that both the verification assessment and RAC are relatively new elements of response requirements, it is no surprise that a certain level of confusion exists which will hopefully be resolved as these processes are actually implemented. It is welcome that the Office of Response Policy remains ready to advise response plan holders and resource providers with additional information and guidance as these programs are implemented.

Vessel owners are strongly urged to discuss these provisions with their spill response team, particularly their Ois, in order to be prepared to meet the USCG expectations of both the verification process and RACs.

### **Trump Administration – Transportation Infrastructure Development Priorities**

The Trump Administration has published its top 50 list of infrastructure development projects in a document entitled "Emergency and National Security Projects". It is important to keep in mind that this is a "wish list" and most of the programs listed have not been subject to the appropriations process which will assure funding for these projects. Of interest, are the substantial number of maritime related projects including lock projects on the Ohio River (4), Mississippi River Shipping Channel Dredging, South Louisiana (7), Savannah Harbor Expansion Acceleration (19), Port Newark Container Terminal Improvements (32), Upper Mississippi Locks 20-25 project (37), Illinois River Locks in Lagrange and Peoria (38), IHNC Lock Replacement in New Orleans (41),



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Chickamanga Lock reconstruction (42), Soo Locks Reconstruction (43), Upper Ohio River Navigation Improvements (45), and the Monongahela River Locks and Dams project (46). While most of the above projects relate to much needed development of the US inland waterways infrastructure, several would provide benefits to the international shipping industry, a welcome addition to the historical lists published by prior Administrations which focused almost exclusively on land based infrastructure projects (rail and air).

A copy of the document may be reviewed at:

<https://www.documentcloud.org/documents/3409546-Emergency-NatSec50Projects-121416-1-Reduced.html>

### **USCG Policy includes Cyber in Reporting Suspicious Activity and Breaches of Security**

The USCG released CG-5P Policy Letter 08-16, *REPORTING SUSPICIOUS ACTIVITY AND BREACHES OF SECURITY*, which has been updated to include cyber reporting and is available here:

[USCG Policy Letter- Reporting Suspicious Activity and Breaches of Security](#)

- This policy letter defines suspicious activity and breaches of security then identifies examples of incidents required to be reported along with the means to do so. Keep in mind the typical caveat is included, the list is not all inclusive and companies should use their "best judgment" to report.
- USCG is focused on companies reporting targeted cyber-attacks and not "countless malicious but low-level events that are normally addressed via standard anti-virus programs and similar protocols."
- "Operators should only report cyber events that are out of the ordinary in terms of sophistication, volume, or other factors which, from the operator's perspective, raise suspicions."
- Suspicious activity and breaches of security must be reported to the National Response Center at 1-800-424-8802.
- If the Suspicious activity and/or breach of security is purely cyber related (no damage to people, environment or equipment), the reporting requirement is met by contacting the National Cybersecurity and Communications Integration Center (NCCIC) in lieu of the NRC, as the NCCIC may be able to provide technical assistance to the reporting party. NCCIC's number is 1-888-282-0870. To cover yourself, we advise to call the NRC as well in any case until this process is more mature.

### **US to follow IMO for enforcement of STCW 2010 Amendments**



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The USCG issued a notice that the U.S. will follow IMO's recommendation (MSC Circ. linked below) to delay enforcement of the 2010 STCW amendments until July 1, 2017.

USCG Port State Control Officers will still review the requirements of the STCW 2010 amendments during examinations in the U.S. and include those in the PSC report. Enforcement action will only be taken on any deficiencies found that are not part of the new transitional provisions within the STCW requirements.

Aboard U.S. Flag ships, any mariner with a limitation on their MMC must provide evidence to the inspector that they have completed the training and submitted the application to the NMC. If not, a deficiency will be issued to the ship but no control actions will be taken against the mariner or ship until July 1, 2017.

### **USCG Contact Information for this:**

U.S. Flag Ships: [CG-CVC-1@uscg.mil](mailto:CG-CVC-1@uscg.mil) (Domestic Vessel Compliance)

Foreign Flag Ships: [PortStateControl@uscg.mil](mailto:PortStateControl@uscg.mil) (Port State Control Program)

### **Supporting Documents:**

[MSC Circular on STCW 2010 Amendments Enforcement](#)

[Maritime Commons-US will follow IMO recommendation for enforcement of STCW 2010 amendments](#)

### **Launch of the U.S. Maritime Advisory System**

The U.S. Maritime Advisory System launched this week to streamline the process for Government entities issuing maritime security alerts and advisories. CSA has been advising the governmental working group developing this process from a stakeholder perspective for the past two years. The Departments of State, Defense, Justice, Transportation, and Homeland Security, and the intelligence community worked together to develop this system.

Advisories and Alerts will be emailed out and also posted on the web at [www.marad.dot.gov/MSCI](http://www.marad.dot.gov/MSCI)

Click here for full advisory: [U.S. MARITIME ADVISORY 2017-001](#)