



CHAMBER OF SHIPPING OF AMERICA

MONTHLY REPORT FOR BIMCO

AUGUST 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.

Impacts of US State Department Personnel Reduction in Russia

CSA has engaged in discussions with the US State Department relative to impacts of the current US/Russian personnel cap on the maritime industry and particularly, Russian mariners which are used by some CSA members, I received the following from the Deputy Secretary of State for Transportation Affairs. Clearly obtaining C1/D visas for Russian mariners will be made more difficult given interviews will only be conducted at the embassy in Moscow and no longer at the 3/4 consulates elsewhere in Russian. CSA has also had a second discussion with the State Department Consular Affairs Division and confirmed that Russian citizen mariners may also obtain mariner visas from US embassies and consulates in other countries and given the possibility of these individuals carrying valid Schengen visas, this may be a preferable option based on their geographic location's relatively closer proximity to US embassies/consulates in other countries. Several caveats attach to this alternative not the least of which are whether these embassies/consulates are able to schedule an appointment given their current in-country work load, whether the applicant can provide a logical reason for applying in a non-Russian embassy/consulate (arguably the personnel drawbacks in US embassy/consulates in Russia would suffice) and whether these other US embassies/consulates are able to determine their qualification for the mariner visa.

Text of the State Department Response is as follows:

As a result of the Russian government's personnel cap imposed on the U.S. Mission, all nonimmigrant visa operations throughout Russia are suspended as of today August 23, 2017. Then, starting on September 1, 2017, nonimmigrant visa interviews will be conducted only at the U.S. Embassy in Moscow. The Embassy's announcement and further info can be found at <https://ru.usembassy.gov/visas/>



CHAMBER OF SHIPPING OF AMERICA

All impacted mariners are urged to take this development into account when scheduling renewal of expiring mariner visas.

US Coast Guard Type Approves a Fifth Ballast Water Treatment System

In mid-August, the US Coast Guard issued a type approval to Echochlor, Inc. The system utilizes filtration and chemical injection for ballast water treatment. The US type approval is issued for flow rates from 500 to 16,200 cubic meters per hour. The Erma First BWTS is also listed as review pending which means the testing package is complete, has been received by the Coast Guard and is pending a decision re: issuance of US type approval.

A copy of the type approval certificates may be viewed at https://homeport.uscg.mil/mycg/portal/ep/programView.do?channelId=-18366&programId=457247&programPage=%2Fep%2Fprogram%2Feditorial.jsp&pageTypeId=13489&BV_SessionID=@@@@1095769675.1503507354@@@&BV_EngineID=ccceadhghfhjedcefecfindfkldffm.0

California State Lands Commission (CSLC) Final Regulations on Biofouling (Article 4.8 – Biofouling Management Regulations to Minimize the Transport of Nonindigenous Species from Vessels Arriving at California Ports)

CSLC has promulgated its final regulations on biofouling management. A number of industry associations provided input to CSLC in an attempt to inject some reasonableness into these regulations and in some, but not all, cases were successful. The regulations and supporting documents are available for download at the CSLC website at: <http://www.slc.ca.gov/Programs/MISP.html> Note link to regulations and supporting documents may be found in hotlink in posted document "Letter on the Approval of Biofouling Management Regulations".

There are several key provisions that need be noted by shipowners operating vessels in California waters.

Effective October 1, 2017:

- Previous reporting requirements for the Hull Husbandry Reporting Form, the Ballast Water Treatment Supplemental Reporting Form and the Ballast Water Treatment Annual Reporting Form are repealed.
- A new consolidated report, "Marine Invasive Species Program Annual Reporting Form" is adopted. Vessels arriving on/after October 1, 2017 which have previously called in a California port and completed the requisite reports (which are now repealed) need not file the new



CHAMBER OF SHIPPING OF AMERICA

consolidated report for 2017. Vessels which call in a California port on/after October 1, 2017 and have not previously called in a California port in 2017, must file the new consolidated report. Effective January 1, 2018 and all years thereafter, ALL vessels calling in a California port must submit the new consolidated report at least 24 hours prior to arrival for its first California port call in that calendar year. The completed report must be sent to CSLC by email (bwform@slc.ca.gov), fax at 562.499.6444 or my mail to CSLC, Marine Environmental Protection Division, 200 Oceangate, Suite 900, Long Beach, CA 90802.

Effective after an existing vessel's first regularly scheduled out-of-water maintenance (i.e. dry dock) after January 1, 2018 or for new vessels on delivery on/after January 1, 2018 the following requirements must be met:

- Development and maintenance of a Biofouling Management Plan (Section 2298.3)
- Development and maintenance of a Biofouling Record Book (Section 2298.4)
- Implementation of mandatory biofouling management of the vessel's wetted surfaces (Section 2298.6)
- Implementation of mandatory biofouling management for vessels that undergo an extended residency period (i.e. remain in the same location for 45 or more days) (Section 2298.7)

Notice of Public Outreach Programs

Expecting a number of questions on these final regulations, CSLC has scheduled an online webinar and two meetings (Southern California in Long Beach, CA, Northern California in Martinez, CA) as follows:

- On Line Webinar – Wednesday, September 20, 2017 at 1300 PST
- S. California Meeting – Tuesday, September 19, 2017 at 1000 PST at the Port of Long Beach Board Room, 4801 Airport Plaza Drive, Long Beach, CA 90815
- N. California Meeting – Tuesday, September 26, 2017 at 1000 PST at the Shell Refinery Clubhouse, 1635 Pacheco Blvd., Martinez, CA 94553

Individuals wishing to attend any/all of these meetings should RSVP to CSLC.MEPDMISP@slc.ca.gov by September 15, 2017 and indicate which events you wish to attend.

Key provisions of the regulations are as follows:



CHAMBER OF SHIPPING OF AMERICA

- **Section 2298.1** – defines purpose, applicability and implementation date of the regulations as follows:
 - Requirements based on best available technology economically achievable
 - Applies to all vessels carrying or capable of carrying ballast water that arrive in a California port or place (note capable of carrying ballast water includes vessels that may carry ballast water in trim tanks not otherwise designated as ballast tanks).
 - Note emergency exemption clause provided in Section 2298.9.1
 - All points in San Francisco Bay East of the Golden Gate Bridge (including Stockton and Sacramento) are deemed as the same “California port or place”.
 - The ports of Los Angeles, Long Beach and El Segundo are deemed the same “California port or place”.
- **Section 2298.2** – key definitions. In particular note definitions for “effective coating lifespan” (key criteria for determining compliance status in section 2298.6) and “niche areas”.
- **Section 2298.3** – contains requirements for vessel specific Biofouling Management Plan which include:
 - must be maintained onboard, be specific to the vessel and be made available to port state control officials (USCG, EPA and CA)
 - must be regularly reviewed, revised and updated to reflect current practices and management programs
 - must contain sufficiently detailed descriptions of the biofouling management strategy such that ship’s crew can understand and comply
 - be consistent with the IMO “Guidelines for the Control and Management of Ships’ Biofouling to Minimize the Transfer of Invasive Aquatic Species (“the Guidelines”) adopted on July 15, 2011
 - Include management practices and anti-fouling systems used for both hull and niche areas including manufacturer, model, product name, date of installation or application and other specifics relating to (1) anti-fouling coatings (intended out of water maintenance or drydocking interval, range of vessels speeds for which coating is



CHAMBER OF SHIPPING OF AMERICA

designed, effective coating lifespan and copy of IMO AFS Certificate, among others and (2) marine growth prevention systems (MGPS) (location of anodes/dosing outlets, manufacturer's recommended doses and frequency).

- Provides a 60 day grace period for vessels arriving at a California port for the first time since its most recently regularly scheduled out-of-water maintenance (i.e. drydock)
- **Section 2298.4** –contains requirements for the development and maintenance of a Biofouling Record Book which include:
 - Be maintained on vessel and available for inspection by port state control officials
 - Alignment with the IMO Guidelines noted in section above
 - Include details of all inspections and biofouling measurement measures taken since the last drydock (or delivery for new vessel)
 - Include specific management measures implemented for all niche areas as required in Section 2298.6(b)(2)
 - Provides for 60 day grace period for vessels arriving at a California port for the first time since its most recently regularly scheduled out-of-water maintenance (i.e. drydock)
- **Section 2298.5** – incorporates new consolidated reporting form and requires reporting at least 24 hours prior to first arrival of each calendar year in a California port.
- **Section 2298.6** – this section entitled "Biofouling Management for Wetted Surfaces" is the "meat" of this regulatory package and generally requires the following:
 - Distinction between wetted hull surfaces (paragraph (a)) and niche areas (paragraph (b))
 - Antifouling coating should not be relied upon past its effective lifespan
 - If antifouling coating is used beyond its effective lifespan or if antifouling coating is not used at all, additional management measures must be employed
 - Niche areas (listed in paragraph (b)(1)) are recognized as problem areas with limited access during normal operations and must be managed as per details in Biofouling Management Plan, with



CHAMBER OF SHIPPING OF AMERICA

documentation in Biofouling Record Book when management practices are conducted or failure to conduct management practices are not completed and reasons why they were not completed.

- **Section 2298.7** – includes requirements for vessels inbound to California waters that prior to arrival have experienced an “extended residency period” since its last drydock, in water treatment or in water cleaning, where “extended residency period” is defined as remaining in one port or place 45 days or longer (see definition in Section 2298.2).
- **Section 2298.8** – clarifies current regulatory text and states that propeller cleaning is permitted in California waters.
- **Section 2298.9** – contains application, notification and approval procedures for alternative methods of compliance and requests for emergency exemptions (vessels making an unscheduled call in California ports, but note bunkering calls are not included in the definition of “emergency” under this section).

ECDIS Software Upgrade Install / Deadline Issues

As you may recall, CSA has sent updates over the past few months on the ECDIS software upgrades regarding compliance by August 31, 2017. The USCG released this MSIB on August 25th regarding the ECDIS upgrade: [USCG ECDIS MSIB- 009-17 8-25-2017](#)

Contained in this MSIB is guidance for US Flagged vessels on International voyages not in ECDIS compliance. It is also noted that foreign vessels entering the US may be checked for the ECDIS upgrade to IHO standards by USCG PSC. Internationally and Domestically documentation from the manufacturer with specific information such as, why the upgrade is not complete and when it will be complete along with sufficient up-to-date paper chart and navigating by them will be extremely important if your ship is non-compliant.

NOAA Regulatory Reform Request for Comments

CSA has provided formal comments to the docket on NOAA’s request for comments on regulatory reform. Specifically, we addressed the current ship strike mitigation regulations which impose mandatory speed limits on vessels on the East Coast of North America in certain spatial and temporal conditions. Relevant points made in our comments are as follows although most of the arguments of the points made have not been included in the interest of space. The full comment letter is available upon request from kmetcalf@knowships.org



CHAMBER OF SHIPPING OF AMERICA

[BEGIN QUOTE] The specific regulation we wish to address are those regulations found at 50 CFR 224.105 which address speed restrictions imposed for the protection of the North Atlantic Right Whale. While CSA member companies are supportive of reasonable and appropriate requirements which will provide real benefit and reduced risks of ship strikes to the North Atlantic Right Whale, measures currently in place (with their related significant operational and economic impacts) designed to achieve this end have not yet been shown to actually reduce the risk of ship strikes in the regulated areas.

In response to this request for comments on streamlining regulatory processes and reducing regulatory burden, we respectfully request that 50 CFR 224.105 be suspended until such time as a more targeted strategy supported by scientific data is developed and points noted below are addressed.

In short, because the correlation between current requirements and reduced risk has not been shown, CSA requests suspension of the current regulations referenced above. During the rulemaking which proposed elimination of the sunset date found in the original regulation, CSA recommended that the regulation not be made permanent via elimination of the expiration date and urged the agency to extend the rule for another fixed period of time e.g. 5 years, to allow for the much needed additional analysis and data collection to enable a scientifically justifiable conclusion as to whether the current requirements do, in fact, make a positive contribution to the reduction of risk from ship strikes. The lack of additional analysis and data collection which justified this request is still true today.

The current regulation should be suspended because there continues to exist an inability to correlate existing ship strike data with what, if any, reduction in the risk of ship strikes is achieved from implementation of the current regulatory framework. Numerous studies both prior to and after publication of the 2008 final rule have been conducted to assess the impacts of the current regulatory framework on the North Atlantic Right Whale population (Conn and Silber, 2013; Silber and Bettridge, 2012; Lagueux et al., 2011; Wiley et al., 2011; Vanderlaan and Taggart, 2007). Of these studies, in our opinion, the most relevant and timely study which speaks to the issue of whether sufficient data exists to form the basis for conclusions about the efficacy of the current regulation is Silber and Bettridge, 2012 which states that:

“Although these data sets (including both vessel operations and biological data) were substantial and the analyses thorough, our findings are inconclusive regarding the biological effectiveness of the rule in achieving its objectives, because the time allotted (based on a sampling period of only two years given the timing of the expiration of the rule and to allow sufficient time to develop this report) to determine the effectiveness of



CHAMBER OF SHIPPING OF AMERICA

the rule was simply too brief.” (Silber and Bettridge, 2012 at iv, our emphasis added)

Evaluations of the impact of speed restrictions on the reduction of lethal ship strikes provides no confirmation that speed restrictions are, in fact, the most effective strategy to reduce the risk of ship strikes, lethal or otherwise. Vanderlaan and Taggart (2007), Wiley et al., 2011 and Conn and Silber (2013) all address the issue of the utility of speed restrictions in areas where vessels and whales are co-located to reduce the probability of ship strikes which are lethal or cause serious injury. Specifically the Conn and Silber study (2013) notes that “Owing to several new observations of serious injury vessel strikes at lower vessel speeds, the relationship between lethality and strike speed was less extreme than the one produced by Vanderlaan and Taggart (2007)”. This recognition actually argues that the uncertainty about the relationship between ship speed and mortality is actually increased from previous findings and thus supports the proposition that the speed rules should not be suspended until such correlation between ship speed and mortality is established.

Ship strike data, particularly data used in the Conn and Silber (2013) study, suggest that the vessels currently covered by the speed restriction rule, are not the vessels which are involved in reported ship strikes. Conn and Silber evaluated a 12 strike incident database extending over a 57 year period. Of these 12 recorded strikes, 10 (over 80%) were the result of strikes by sovereign vessels (US Navy, US Coast Guard) not covered by the current rule. While CSA recognizes the legal and political hurdles associated with the regulation of sovereign vessels, the significant number of these vessels associated with ship strikes in this and other databases, does not provide any basis to form scientifically justifiable conclusions about the relationship of ship strikes and speeds of vessels covered by the current speed restriction rule.

Justification of the final regulation improperly and without basis suggests that there has been no growth in the North Atlantic Right Whale population over the past 25 years, a statement which directly conflicts with data cited in this proposed rule and the 2008 rule. The 2008 final rule notes that the best current estimate of the minimum population size is 313 whales and further states that this number is approximately the same as it was 25 years ago (Waring et al., 2007). However, the proposed rule stated that “The most recent (October 2011) peer-reviewed estimate of minimum population size is 444 North Atlantic right whales known to be alive in 2009 (Waring et al., 2012), which is approximately the same number that existed 25 years ago (Best et al., 2001)”. Without regard to the appropriate baseline 25 years ago, it is clear that the North Atlantic right whale population has increased by 131 whales since 2002 which represents the base year for the Waring analysis published in 2007, and 2009 which represents the base year for the



CHAMBER OF SHIPPING OF AMERICA

Waring analysis published in 2012. In other words, the North Atlantic right whale population has increased by approximately 30% over the 7 year period (2002-2009) representing an annualized growth rate of over 5%. It is important also to note that the proposed rule cited growth rates for other "recovering" species of between 4-7%, placing the current growth rate for the North Atlantic right whale well within this range for other "recovering" species. This point is made in view of the negative perspective provided in the proposed rule and suggests that the positive trend in the current growth rate is worth noting, although we recognize that the current population trends and numbers do not suggest that this species is outside the needed protection of its endangered status.

The ideal and most effective strategy to avoid ship strikes of any whale species is to avoid co-location of vessels and whales. It requires no comprehensive scientific studies to verify the validity of the statement that temporal and spatial separation of vessels and whales provides the most effective means to reduce the risk of ship strikes, regardless of vessel speed. Simply put, a ship strike cannot occur if a vessel and whale are not at the same location at a given point in time. This accepted fundamental is the foundation of the Seasonal Management Area (SMA) and Dynamic Management Area (DMA) concepts included in the current regulation where it is recommended that these areas be avoided where possible. Furthermore, recent work by a NOAA sponsored joint working group on which CSA participated addressing the ship strike issues off the coast of California and particularly the approaches to San Francisco, focused on appropriate measures that could be taken to avoid co-location of whales and vessels inbound/outbound in the approaches to San Francisco. The joint Advisory Council Vessel Strike and Acoustic Impacts Working Group for the Cordell Bank and Gulf of the Farallones (JWG) national marine sanctuaries provided recommendations on ways to reduce impacts from ship strikes as well as vessel noise on whales.

While focus of deliberations on the East Coast of the US has traditionally been towards speed restrictions, focus of discussions on the West Coast have been toward reduction of co-location situations. While this disconnect can be explained to some degree by the differences in the areas involved (smaller areas on the West Coast, larger areas on the East Coast), vessel traffic patterns and the behavior of the whale species involved, we believe that focusing on these co-location situations (versus speed restrictions over large geographic areas over extended time periods) will provide the maximum risk reduction for the avoidance of ship strikes and should form the basis for future discussions on the appropriate and most effective strategies to reduce the risk from ship strikes of the North Atlantic right whale. The controversy regarding whether speed restrictions do actually reduce this risk and the degree of speed restrictions necessary to reduce this risk to an acceptable level will continue. However, there is no disagreement from any interested party that separating whales from vessels ensures that this risk is minimized.



CHAMBER OF SHIPPING OF AMERICA

Future regulatory requirements should focus on reduction of co-location situations and transition from the current mandatory SMA/voluntary DMA approach to a regulatory approach that creates mandatory requirements only for DMAs. Due to historical data involving North Atlantic right whale migratory routes along the East Coast of the US at the time the 2008 rule was finalized, the mandatory requirements in designated SMAs was adopted. This “best that we have now” approach using historical spatial and temporal whale location data may be justified in a situation where little real time data is available. However, basing mandatory requirements and imposing the significant operational and economic impacts on vessels relative to where whales may have been several years past should not be the preferred method to minimize the risk of ship strikes. Rather, a system based on real time (or near real time) whale sightings should be designed and implemented on the East Coast of the US as is now contemplated for the West Coast of the US.

While we understand the scope of such an initiative and the need for sufficient resources to create a real time sighting database, these challenges can be no excuse for failure to pursue the most effective strategy of reducing ship strikes. Combining existing government based overflight and sighting networks with a shipboard based sighting program could provide sufficient information to NOAA as well as vessels in an area of known sightings to provide an effective DMA based regulatory structure that mandates avoidance of areas of known sightings or implements speed restrictions in these areas. Implementing such a system assures that the negative operational and economic impacts on shipping are directly related to a real reduction of risk from ship strikes in a given area.

CHAMBER OF SHIPPING
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