



Seminar at The Yacht Club of Greece – Piraeus



Port-State Control, Regulatory and Pollution Issues, and Enforcement

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What We'll Be Talking About ...

- Recent Oily Water Separator Cases
- Enforcement Trends
- Avoiding Becoming Part of the Trend
- Role of Flag State



Criminal Enforcement Update

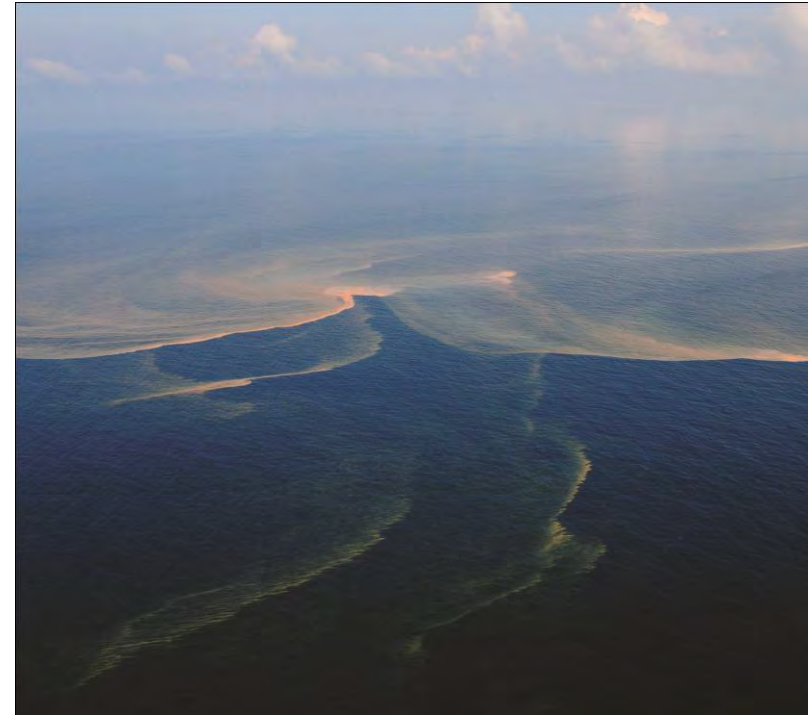


How did we get here?

Where are we going?

Magic Pipe Cases – What Is The Crime?

- In 1990s, cases involved discharges in U.S. waters in violation of MARPOL / APPS.
- Enforcement role has expanded to reach improper discharges wherever they occur.
- APPS regulations require accurate maintenance of ORB.
- Inaccurate ORB brought into U.S. port can be prosecuted as criminal violation.




Oil Record Book Entry

Oil Record Book Entry

NAME OF SHIP INSPIRATION

DISTINCTIVE NUMBER
OR LETTERS C6 FMS

~~CARGO/BALLAST OPERATIONS~~ (OIL TANKERS)* / MACHINERY SPACE
OPERATIONS (ALL SHIPS)*

Date	Code (letter)	Item (number)	Record of operations/signature of officer in charge
SEP. 09.02	D	13	DISCHARGED APX 4 m ³ OF BILGE WATER FROM MB CLEANSIDE TO OVERBOARD
	D	14	STARTED 05:30 STOPPED 06:45
	D	15.2	THROUGH 15 PPM EQUIPMENT
			START POSITION 27°48'N 088°48'W
			STOP POSITION 27°28'N 088°37'W
			HOLDING TK. MB CLEANSIDE APX. 7 m ³ R.O.B.
			

How Do Investigations Start?

- Port State Control inspections
- —“Red flags” will cause investigation to expand
- Whistleblowers
- Remote sensing
- International cooperation
- Obstructive conduct / false statements will intensify any investigation
- Security Agreements
- Casualties / Oil Spills



Some Key Red Flags

- Discharges in excess of capacity
- Conflicts between sounding logs and ORB
- Flexible hoses / blank flanges
- Turned nuts and bolts / chipped paint
- Fresh paint / different colors
- Lack of sludge or disposal records
- Leaking oil / hull stains
- Malfunctioning incinerators
- ORB irregularities—cross-outs, same handwriting, repeats
- OWS systems not matching drawings
- Lack of familiarity with the OWS system



Potential Targets & Penalties

- Chief Engineer and / or other crew members.
- Shoreside superintendents or managers.
- Technical manager can be held responsible as employer of crew although –agent only.”
- Vessel owner can also be held responsible, if it exercised some control over crew.
- Individuals can be incarcerated.
- Companies can be fined under Alternative Fines Act.



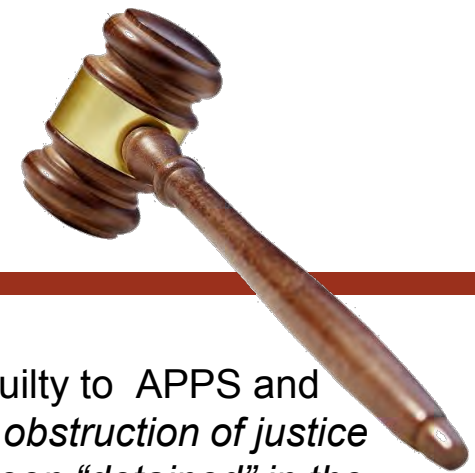
2010 Prosecutions

- 14 criminal prosecutions
- > \$11 million
- 30 months in prison
- OWS cases
- Discharge of sewage / dredge spoils
- Oil spill
- Civil law suit against company / shareholders
- Administrative banning of a ship

*After a slowdown at the end of 2009, DOJ is now getting about **a case a week**, which is almost a record pace.*



And Now 2011...

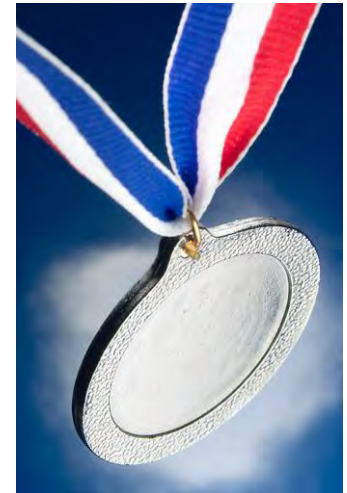


- **In February in Maryland**, vessel management company pled guilty to APPS and obstruction of justice. *Paid \$2.4 million fine. Chief pled guilty to obstruction of justice and was sentenced to 6 months in prison after already having been “detained” in the U.S. for 13 months.*
- **In March in American Samoa**, company pled guilty to false statements, and for maintaining an inaccurate ORB and paid a \$1 million fine, 3 years probation, and an ECP.
- **In April in Louisiana**, in violation of its 2010 probation, vessel owner pled guilty to 8 counts of obstruction of justice, knowingly violating PWSA and APPS resulting in a \$1 million fine and prohibition from doing business in the U.S. during probation.
- **In June in Texas**, company pled guilty to violation of APPS and violation of the PWSA and paid a \$900,000 fine. All ships banned from U.S. during probation.
- **In August in Puerto Rico**, company sentenced to pay a \$700,000 fine, 5 years probation, and an ECP for violating APPS and making false statements to inspectors.
- **In September in Puerto Rico**, company sentenced for violating the APPS and making false statements to the U.S. Coast Guard and paid a \$1 million fine.
- **In November in Oregon**, company pled guilty to APPS violations and making a false statement and paid a \$750,000 fine.

Whistleblower Awards

- Increased whistleblower awards under APPS—50% of DOJ prosecutions arise from whistleblower reports:
 - **2008 Case**
 - 6 whistleblowers awarded between \$43,000 and \$85,000 each
 - **2008 Case**
 - 2 whistleblowers awarded \$125,000 each
 - **2009 Case**
 - 2 whistleblowers awarded \$375,000
 - **2009 Case**
 - 5 whistleblowers awarded \$250,000
 - **2010 Case**
 - 1 whistleblower awarded \$200,000
- BUT several recent cases involved whistleblowers who violated company policies by failing to report known MARPOL violations, and permitted violations to continue over months while gathering evidence:
 - Award in one such case was only 40% of what government sought.
 - In another, no request for award in seven months following sentencing hearing.

– In the discretion of the Court, an amount equal to not more than ½ of such fine may be paid to the person giving information leading to a conviction.”



Reactive or Proactive?

- Responding to a MARPOL compliance problem after ship has been boarded by U.S. Coast Guard surrenders all advantages to the U.S. government.
 - Procedural
 - Investigative
 - Legal
- There are more advantageous options for managing MARPOL compliance issues.



Avoiding This Trend

- Comprehensive Environmental Compliance Program
 - From a Plea Agreement
 - or
 - Implemented in Advance
- Good Company Culture
- Close Coordination with Flag State

“The Department of Justice will continue to prosecute shipping companies who break the laws that protect our oceans.”

~ Assistant
Attorney General
Moreno



Why Be Pro-Active?

- Coast Guard Authorization Act of 2010 – *International Efforts on Enforcement.*
 - Mandates better enforcement coordination between U.S. and international partners regarding oil discharges.
- \$ \$ \$ € € € £ £ £ ¥ ¥ ¥
 - Per DOJ, almost \$250 million and 20 years in jail since 1998.
- Aggressiveness of the Coast Guard and Department of Justice will not change.
- Memoranda of Understanding between the Coast Guard and EPA:
 - Vessel General Permit and MARPOL Annex VI



Environmental Compliance Program

- **Enhanced Compliance Training**

- Deck and Engine Officers / Unlicensed Crew
- Communicate commitment to compliance
- Non-compliance not an option
- Repeated reminders

- **Open Reporting System**

- Information is valuable
- Hotlines, electronic, and anonymous
- Internal monetary rewards



Open Reports – Examples

- —One lock hole missing on forward No.2 cargo hold...cannot lock...stowaway enters cargo hold easy as pie.”
- —Vessel trading in high risk area, without operational Inmarsat telephone...”
- —Ship in conditioning not working at night. Crew cannot sleep.”
- —My Chief Engineer is pumping out bilges to sea without passing through OWS. He’s doing it by bypassing duct keel.”
- —Chief give instruction to engineer and oiler to pump out engine room bilges and bilge holding tank through fire and GS pump to overboard.”



Superintendents

- **Role of Superintendent**

- Key component to compliance program
- Knowledge / familiarity to identify problems early
- Shoreside accountability



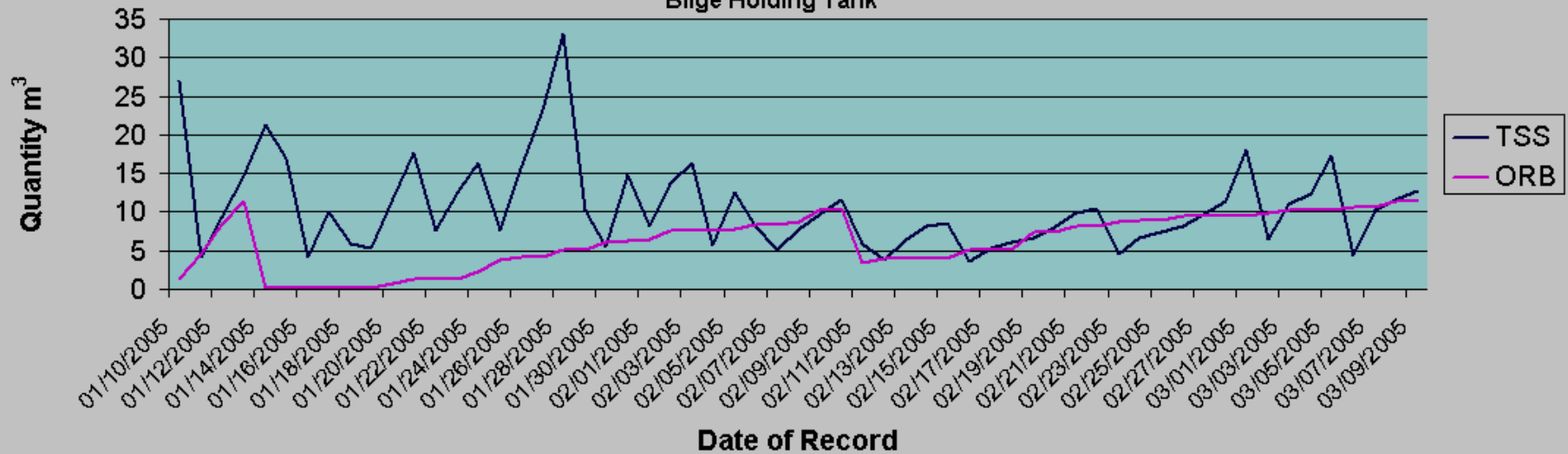
- **Some Actions**

- Internal Audits, inspections, comparisons of records
- Equipment working? Maintenance problems? Discharging ashore? Spares?
- Address problems
- Discussions / Interviews of crew at all levels

- **Reinforce commitment to compliance!**

Comparing Records

Comparison of Records
Tank Sounding Sheets vs. Oil Record Book Entries
Bilge Holding Tank



Environmental Compliance Program

- **Audit Program**

- Internal, Third Party or combination
- Good check on effectiveness of program
- Identify opportunities for improvement
- Stay on top of regulatory developments!

- **Internal Investigations**

- Problems often identified by Superintendents
- Investigate allegations to determine merit
 - Internal? Outside counsel?
- Corrective actions/reporting



Vessel General Permit

It's All About the Paperwork...

- Current VGP expires in December 2013.
- EPA working on next version, which should be proposed by year's end.
- Conflicting state requirements that require technology not yet available (CA and NY).
- NY granted ballast water extension requests until August 2013, but dealing with graywater case-by-case.



Coast Guard / EPA

Memorandum of Understanding – VGP

The MOU

- **MOU published February 11, 2011**
 - enforcement coordination, training, monitoring, verifying compliance and outreach
- **USCG Policy Letter 11-01**
 - guidelines to evaluate compliance and incorporate into existing vessel inspection program
- **When deficiencies discovered:**
 - Focus will be on record keeping
 - Encourage immediate corrective action
 - Entered into MISLE, which is available to EPA for review and enforcement
 - Penalties being issued

Penalties

- Administrative / Civil / Criminal
- Injunctive
 - prevent vessel from operating or require a corrective action
- Record keeping violations similar to OWS cases



Coast Guard / EPA

Memorandum of Understanding – Annex VI

The MOU

- **MOU published June 27, 2011**
 - inspections, enforcement coordination, verifying compliance and outreach
- **Letter to Industry**
 - setting forth requirements and alerting industry to enforcement
- **Key Issues:**
 - Records
 - Engines / EIAPP
 - Fuel Standards / Bunker Notes
 - Reception Facilities

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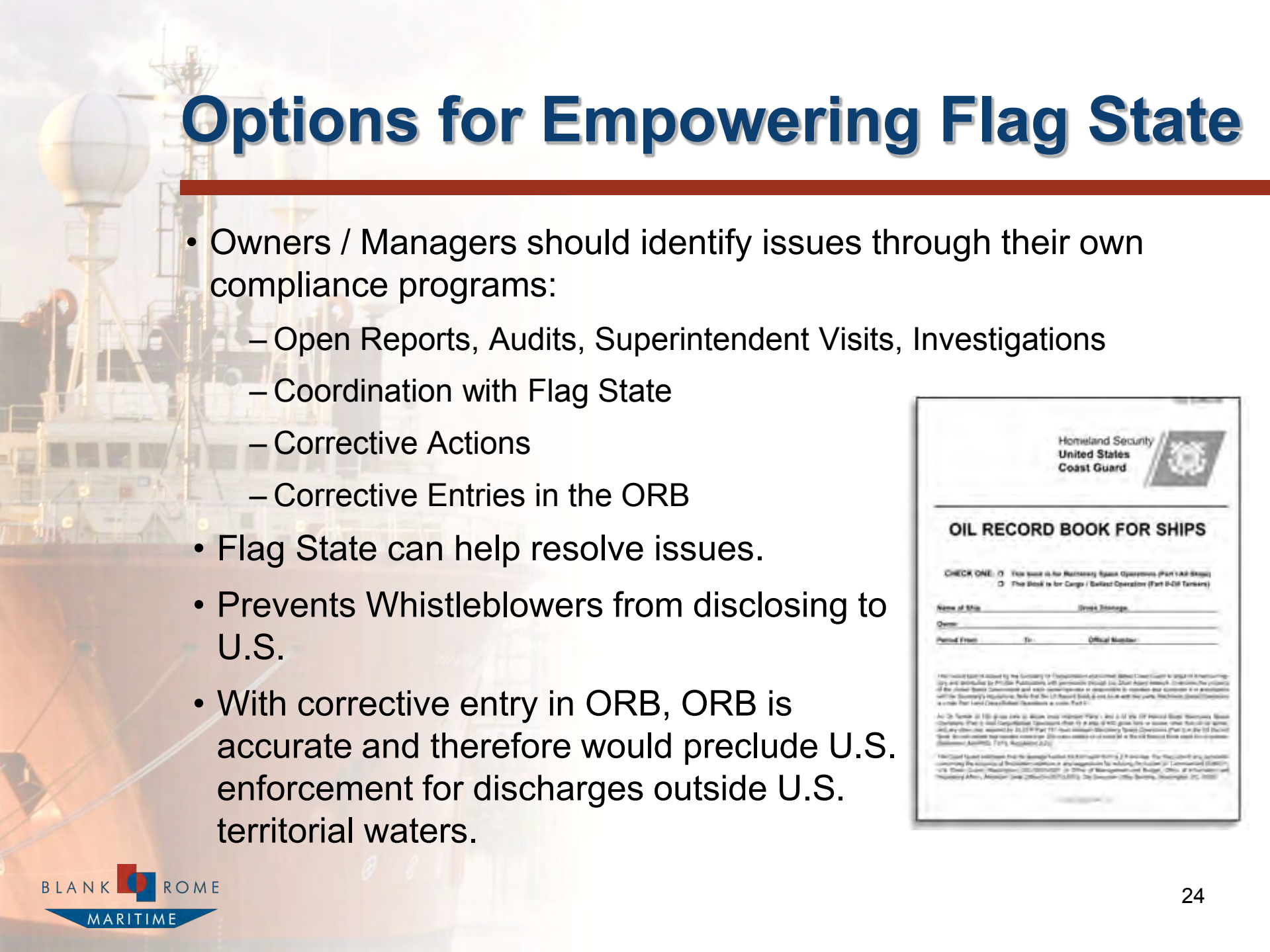
Flag State's Role


- Flag State intended to have primary, ongoing responsibility for ensuring compliance.
 - Requiring corrective actions
 - Taking enforcement
- Port states authorized to inspect, investigate, and enforce for pollution events in their waters
- Early U.S. cases were consistent.
- Current U.S. cases——“Mission Creep”——and irrelevant where conduct occurs.
 - U.S. has taken over primary compliance role.
 - Per DOJ, it is because flag states are too complacent.



Options for Empowering Flag State

- Owners / Managers should identify issues through their own compliance programs:
 - Open Reports, Audits, Superintendent Visits, Investigations
 - Coordination with Flag State
 - Corrective Actions
 - Corrective Entries in the ORB
- Flag State can help resolve issues.
- Prevents Whistleblowers from disclosing to U.S.
- With corrective entry in ORB, ORB is accurate and therefore would preclude U.S. enforcement for discharges outside U.S. territorial waters.



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The End ...

Questions?



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