

## Joint Seminar with the Marshall Islands Registry:

### *United States Regulatory, Financial, and Political Issues Affecting Shipping*

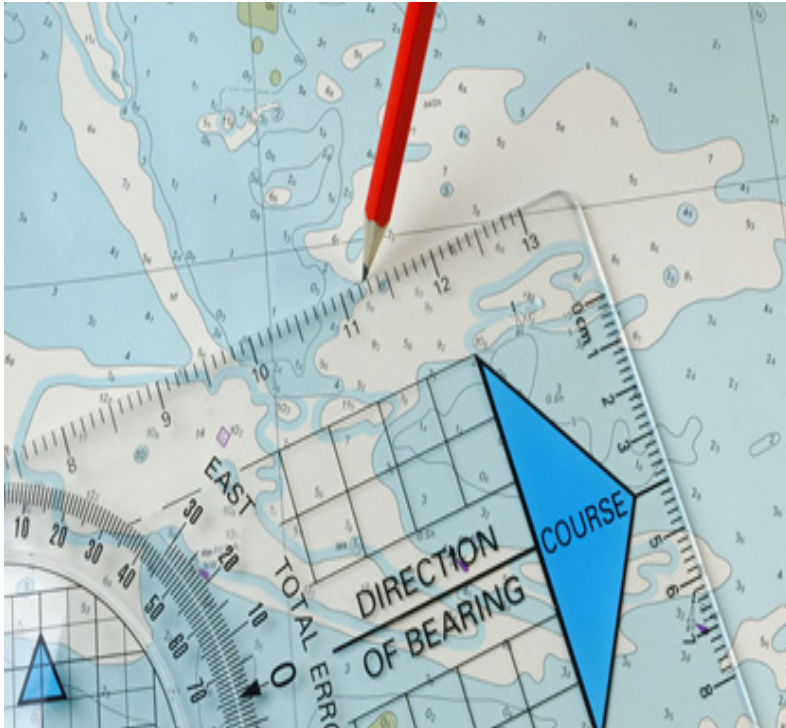


### *The Ballast Water Conundrum – Options, Challenges and Practical Realities of Compliance*

Jeanne M. Grasso, Partner

April 26, 2017  
Athens, Greece

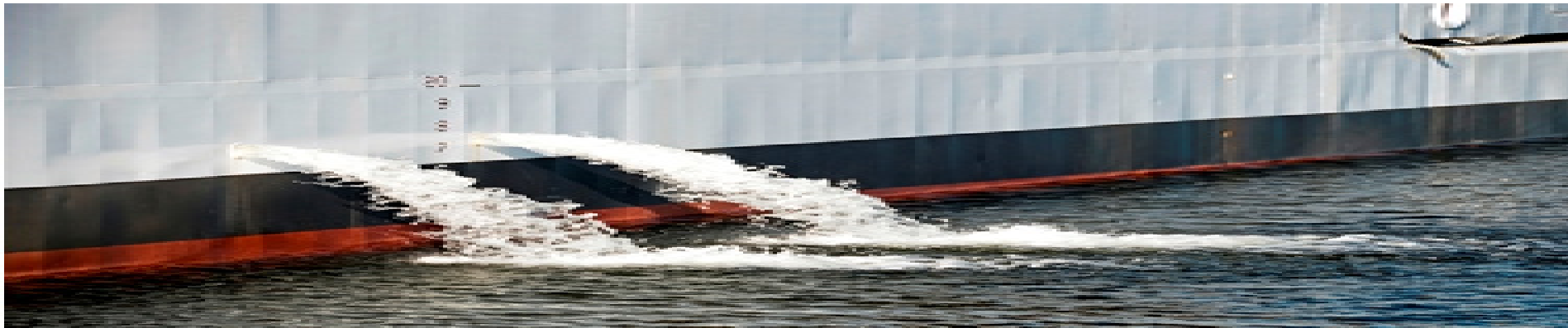
# What We'll Be Talking About ...



- Legal Framework
- Compliance Challenges
- Practical Realities
- Enforcement Risks

# Ballast Water Requirements

- **IMO's Ballast Water Convention**
  - *Entry into force September 8, 2017*
  - Compliance date (at least for now) – first IOPP renewal after entry into force
  - Type-approval of Ballast Water Management Systems—different protocol than the US Coast Guard
- **U.S. Coast Guard's Ballast Water Management Program**
- **U.S. EPA's Vessel General Permit**



# EPA's 2013 Vessel General Permit

- History born in litigation
- Effective date December 19, 2013
- 27 discharges covered
- Some requirements/differences from the original 2008 VGP
  - Ballast water (numeric limits)
  - Monitoring and sampling requirements for treated ballast water
  - Avoid uptake in areas with infestations, near sewage outfalls or dredging, in darkness
  - Clean ballast tanks regularly, but no sediment discharge in VGP waters
- Extensive recordkeeping, inspections, corrective actions
- *Separate and distinct civil and criminal penalties*

# EPA's 2013 Vessel General Permit (cont.)

## *More Litigation....*

- *On October 5, 2015 – U.S. Court of Appeals for the Second Circuit ruled that the EPA acted “arbitrarily and capriciously” in drafting the ballast water discharge provisions of its 2013 VGP*
- EPA must revise the permit or justify its decision in the 2018 VGP, which is expected to be published for comment in the summer/fall 2017
- *Nothing changes for now.*



# State Certifications

- States' rights: they can regulate more stringently  
...and many have for ballast water
- Numerous states have certified the VGP with additional ballast water provisions (AZ, CA, CT, HI, IL, IN, ME, MI, MN, NY, OH, RI, WA and WI)



# Legislative Developments

- **Commercial Vessel Incidental Discharge Act**
  - **H.R. 1154** – introduced 2/16/17 and referred to the House Transportation and Infrastructure Committee and the House Environment and Public Works Committee (no action)
  - **S. 168** - introduced 1/17/17, referred to the Senate Commerce, Science and Transportation Committee and reported without amendment on 1/24/17
- Generally preempts states from regulating incidental ballast water discharges into navigable U.S. waters
- Requires the USCG to use the MPN method for type approvals via a Policy Letter
- 10 Attorneys General have objected (CA, IL, ME, MA, MI, NY, OR, RI, VT, and WA)



# U.S. Coast Guard and EPA Coordination on the VGP

- **US Coast Guard inspects / EPA enforces**
  - *Coast Guard Job Aid for VGP Inspections on July 15, 2014*
- **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 issued by EPA





# U.S. Coast Guard – Ballast Water Management

- Mandatory ballast water management and reporting
  - Applies to vessels operating in U.S. waters with ballast tanks
- Require compliance with treatment standard
- Same as IMO's but a different testing protocol for type-approvals
- Compliance with ballast water requirements is a port state control priority – civil and criminal penalties → separate and distinct from VGP



# U.S. Coast Guard – Final Rule (March 2012)

- **Options:**

- 1) USCG Type-Approved Treatment System
- 2) Use only water from the U.S. public water system
- 3) Do not discharge ballast water in U.S. waters
- 4) Discharge to a shore-based treatment facility
- 5) Alternate Management System or Extension



# U.S. Coast Guard BWMS Type-Approvals

- ***Optimarin*** – ultraviolet system
  - Operational Challenge: Requires 72-hour hold time and hazardous area restrictions
- ***Alfa Laval*** – ultraviolet system
  - Operational Challenge: Requires 72-hour hold time
- ***OceanSaver*** – electro-chlorination system
  - Safety Challenge: Hydrogen by-product must be vented; hazardous area restrictions
- ***Current Development***: USCG reviewing two more BWMS
  - *BalClor* electrolysis system (SunRui)
  - Ecochlor
  - Two more expected this year?

# U.S. Coast Guard Extensions – Evolution

- USCG Extension Policy Letter: CG-OES 13-01, Rev. 2 (November 16, 2015)
- MSIB 14-16 (December 2, 2016)
- MSIB 03-17 (March 6, 2017)
  - 12-16 months in advance
  - Statements/proof that alternatives not possible
  - Certification of compliance with Ballast Water Management Plan
  - Decoupling with drydocks
  - Justification why compliance not possible with any of the options
  - If you have an AMS, you must use it
  - **Strategy and Timeline**



# U.S. Coast Guard Extensions – Evolution (cont.)

- **What do I need? When and how to install?**
    - Footprint, flow, power, capacity, safety
  - **Operations/Training**
  - **Must go beyond just the type-approvals**
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- **Flow rate not adequate? *Consider two...three...***
- **72 hours not good enough? *Consider changing operations***
- ***“There’s an engineering fix for everything...”***
- **Drydock early? “Think about it....”**
- **Not practical? *What is...***

# U.S. Coast Guard Ballast Water Enforcement

*“Coast Guard completes ballast water violation investigation, initiates civil penalty”*

- SEATTLE — The Coast Guard, after an investigation of ballast water discharge violations, initiated civil penalty proceedings against the operator, Vega Reederei GmbH & Co. KG, of the bulk carrier Vega Mars (max penalty for National Invasive Species Act violation: \$38,175).

- Coast Guard News (Feb. 13, 2017)



# Criminal Prosecutions with Ballast Water Components

- **Drillship (2014)** – NISA violation, among others, for potentially contaminated ballast water
- **Cargo Ship (2012)** – NISA violation, among others, for failure to report to the National Ballast Information Clearinghouse
- **Cargo Ship (2009)** – NISA violation, among others, for failure to maintain accurate ballast records

→ **RISKS** – False records, false statements, misleading information



# Questions?

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**Jeanne M. Grasso**

Blank Rome LLP

1825 Eye Street NW

Washington, D.C. 20006-5403

Tel: +1 202.772.5927

Mob: +1 202.431.2240

Email: [Grasso@BlankRome.com](mailto:Grasso@BlankRome.com)

