



Client Alert 08-2018

March 05, 2018

U.S. Ballast Water Management Regulations U.S. Coast Guard Navigation & Vessel Inspection Circular NVIC 01-18

The Office of the Commandant of the U.S. Coast Guard (USCG) recently issued [Navigation & Vessel Inspection Circular NVIC 01-18](#) (copy appended to this Alert), containing extensive guidance on compliance with the ballast water management regulations under **33 CFR 151, Subparts C and D**.

We strongly recommend that NVIC 01-18 be maintained as a source of reference in your offices and aboard vessels calling at U.S. ports, as it includes most of the ballast water management regulations applicable to commercial vessels and provides several points of clarification on the procedures to be followed. NVIC 01-18 replaces both NVIC 07-04 and 07-04 (Change I).

NVIC 01-18 is divided into sections covering reporting, recordkeeping and compliance, as well as a separate section describing enforcement options available to the USCG, to be used against non-compliant vessels.

Note : While NVIC 01-18 covers the vast majority of requirements under the US ballast water management regulations, it does not address requirements under the 2013 Vessel General Permit (VGP) that apply to vessels discharging ballast in VGP waters (which extend up to 3 miles from the coastal baseline), or biofouling and sedimentation management (BSM) plan requirements. It is an excellent guidance document but not a comprehensive one. Please ensure that existing requirements under the VGP for ballast water exchanges, monitoring, recordkeeping, sampling and analysis are followed. Since the VGP contains federal as well as state-specific ballast water regulations, it is important to review both in relation to the U.S. region where the vessel is calling, and comply with all those that apply. Vessels must also be in compliance with their BSM Plan and the ballast water management regulations included in NVIC 01-18. Please contact ECM for port/state specific guidance in case you have any questions in this regard.

Questions and/or comments should be directed to ecm@ecmmaritime.com.



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NVIC 01-18
1 March 2018

NAVIGATION AND VESSEL
INSPECTION CIRCULAR 01-18

Subj: BALLAST WATER MANAGEMENT FOR CONTROL OF NON-INDIGENOUS SPECIES IN WATERS OF THE UNITED STATES

- Ref: (a) 33 Code of Federal Regulations (CFR) 151 Subpart C – Ballast Water Management for Control of Non-indigenous Species in the Great Lakes and Hudson River
(b) 33 CFR 151 Subpart D - Ballast Water Management for Control of Non-indigenous Species in Waters of the United States
(c) 46 CFR Subpart 162.060 – Ballast Water Management Systems

1. PURPOSE. This circular replaces Navigation and Vessel Inspection Circulars (NVIC) 07-04, titled, “*Ballast Water Management for the Control of Aquatic Nuisance Species in the Waters of the United States,*” of June 17, 2004, as well as 07-04 Change-1 of October 29, 2004.

The Coast Guard Headquarters Office of Operating and Environmental Standards (CG-OES) and Commercial Vessel Compliance (CG-CVC) developed this circular to provide the latest guidance to maritime industry and Coast Guard personnel based on the 2012 ballast water regulatory amendments as set forth in references (a) through (c).

In 2016, new compliance dates took effect for regulations that set the implementation schedule for ballast water management discharge standards for both existing and new vessels that use Coast Guard approved Ballast Water Management Systems (BWMS). Additionally, the regulations incorporated various compliance options for vessel owners or operators (to include masters, agents, and persons in charge), such as a vessel to use an Alternate Management System (AMS) until they reach their compliance date for installing a Coast Guard approved BWMS or employ one of the BWM practices or methods set forth in reference (a) and (b) regarding BWM requirements.

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NON-STANDARD DISTRIBUTION:

NAVIGATION AND VESSEL INSPECTION CIRCULAR 01-18

2. This circular is to inform the maritime industry and Coast Guard personnel and provide guidance to ensure a more complete understanding of, and maximum compliance with, ballast water management requirements.
3. ACTION.
 - a. Vessel masters, owners, operators, agents, or persons-in-charge. U.S. and foreign flag commercial vessels that are equipped with ballast water tanks and operate in waters of the United States shall comply with the BWM regulatory requirements in references (a) through (c), as applicable.
 - b. Vessel shipping agents. The Coast Guard encourages shipping agents to assist with the communication and coordination process that takes place before a vessel arrives into a U.S. port. Reminding vessel masters of BWM reporting, operational, and recordkeeping requirements helps ensure efficient compliance verifications during Coast Guard vessel examinations.

NOTE: Direct all questions relating to BWM operations to the cognizant Captain of the Port (COTP) or Officer in Charge, Marine Inspection (OCMI); refer to the “Port Directory” on the Coast Guard Homeport website listed in enclosure (3) for a complete list of units, along with 24/7 contact information.

- c. U.S. Coast Guard. COTPs, OCMI, marine inspectors and Port State Control Officers (PSCOs) that conduct BWM verifications shall be familiar with the guidance contained in this circular and are strongly encouraged to share and discuss this information with local maritime industry stakeholders. BWM compliance verifications shall be conducted as part of the regularly scheduled and expanded Port State and Flag State examinations.
4. DIRECTIVES AFFECTED. NVICs 07-04 and 07-04 (Change 1) are hereby cancelled.
5. DISCUSSION.
 - a. The International Convention for the Control and Management of Ships’ Ballast Water and Sediments (BWM Convention) was adopted in February of 2004 and entered into force in September of 2017. Although the United States has not ratified the BWM Convention, we acknowledge this important milestone for controlling the spread of invasive species by ballast water as one of the greater challenges for reducing the environmental footprint of global shipping.
 - b. In March of 2012, the Coast Guard published the final rule titled, “Standard for Living Organisms in Ships’ Ballast Water Discharged in U.S. Waters.” The rule became effective in June of 2012, whereby the Coast Guard amended its BWM regulations by establishing a standard for the allowable concentration of living organisms in ships’ ballast water discharged into waters of the United States. Furthermore, the rule amended Coast Guard regulations for engineering equipment by establishing an approval process for BWMS. The Coast Guard’s discharge standards

are similar to those of the BWM Convention. However, differences exist between the testing and verification protocols for BWM systems.

- c. The Coast Guard is charged with protecting U.S. waters from invasive species, and highly values maritime industry's commitment to that end. Vessel masters, owners, operators, and persons-in-charge are integral to training crews to properly maintain and effectively operate BWM equipment and achieve compliance. Enclosure (1) of this circular incorporates a list of topics that discuss pertinent U.S. regulations in references (a) through (c), while providing guidance on BWM reporting, recordkeeping, compliance and enforcement. Enclosures (2) and (3) provide a list of acronyms, useful website links and email addresses that are referenced in this circular.
6. DISCLAIMER. The guidance in this NVIC is not a substitute for applicable legal requirements, nor does it constitute a rule. It does not impose, and is not intended to impose, legally-binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, the Coast Guard, and Federal and State regulators in applying statutory and regulatory requirements. You may use an alternative approach than outlined in this NVIC which also satisfies the requirements of the applicable statutes and regulations. The Office of Operating and Environmental Standards (CG-OES) or Commercial Vessel Compliance (CG-CVC) is available to discuss alternative approaches.
 7. ENVIRONMENTAL ASPECTS AND IMPACT CONSIDERATIONS.
 - a. This NVIC and the general policies it contains have been thoroughly reviewed by the originating office, and are categorically excluded from further environmental analysis under Coast Guard Categorical Exclusion (CE) #33, in accordance with Section 2.B.2 and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1D. This NVIC is a guidance document intended to enhance implementation and compliance with applicable Coast Guard regulations; it does not amend or change any provision, authorization or requirement found in statute or regulation. Use of CE #33 is appropriate.¹
 - b. This NVIC will not result in any of the following: significant cumulative impacts on the human environment, substantial controversy or substantial change to existing environmental conditions, or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment.
 8. DISTRIBUTION. No paper distribution will be made of this NVIC. An electronic version will be located on the Coast Guard NVIC website. **Enclosure (3) of this NVIC is an index of Coast Guard websites that contain BWM information, resources, and contact information.**
 9. RECORDS MANAGEMENT CONSIDERATIONS. This NVIC has been thoroughly reviewed during the clearance process, in which it was determined there are no further

¹ CE #33 provides: "Preparation of guidance documents that implement, without substantive change, the applicable Commandant Instruction or other Federal agency regulations, procedures, manuals, and other guidance documents."

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records scheduling requirements. This NVIC is in accordance with Federal Records Act, 44 U.S.C. 3101 et seq., NARA requirements, and Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This NVIC does not create a significant or substantial change to existing records management requirements.

10. FORMS/REPORTS. Ballast water reporting forms, including instructions and methods for submission, are available at the National Ballast Information Clearinghouse (NBIC) website.
11. REQUEST FOR CHANGES. Coast Guard personnel may recommend updates to this NVIC by emailing Commandant (CG-CVC) and (CG-OES) via their chain of command.

J. P. NADEAU
Rear Admiral, U.S. Coast Guard
Assistant Commandant for Prevention Policy

- Encl: (1) Reporting, Recordkeeping, Compliance, and Enforcement Guidance
(2) List of Acronyms
(3) List of Coast Guard Websites and Emails

ENCLOSURE 1 – REPORTING, RECORDKEEPING, COMPLIANCE, AND ENFORCEMENT GUIDANCE

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REPORTING, RECORDKEEPING, COMPLIANCE, AND ENFORCEMENT GUIDANCE

INTRODUCTION.

This enclosure provides guidance to Coast Guard personnel and the maritime industry to ensure a complete understanding of, and maximum compliance with, ballast water management (BWM) regulatory and operational requirements

The Coast Guard's BWM regulations require foreign and domestic flag vessel masters, owners, operators, agents, and persons-in-charge to manage ballast water using one of the methods listed in 33 CFR 151 subparts C and D. Vessel owner or operators are also required to report and keep records of their ballast water management activities. Coast Guard marine inspectors and port state control officers have the authority to verify that ballast water management systems installed and operated on board vessels are functional and maintained in accordance with the manufacturer's plans and procedures. Ballast water reporting and recordkeeping will also be checked for timeliness, accuracy, and completeness.

A. APPLICABILITY.

Title 33 CFR 151 subparts C and D apply to ballast water operations of U.S. and foreign flag non-recreational vessels within waters of the United States. Specifically, 33 CFR 151 subpart C applies to vessels equipped with ballast tanks that, after operating on the waters beyond the Exclusive Economic Zone during any part of their voyage, enter the Snell Lock at Massena, New York, or navigate north of the George Washington Bridge on the Hudson River, regardless of other port calls made in the United States or Canada during that voyage, except as expressly provided in 33 CFR §151.2015(a).

33 CFR 151 subpart D applies to vessels that are equipped with ballast tanks and operate in the waters of the United States, except as provided in 33 CFR §151.2015 or 33 CFR §151.2020 of subpart D. Subpart D provides ballast water compliance, recordkeeping, and reporting requirements and, in accordance with 33 CFR §151.1502, the recordkeeping and reporting requirements also apply to vessels subject to 33 CFR subpart C.

1. Definitions and Further Guidance.

- a. *Alternate management system (AMS)*, as defined in 33 CFR §151.1504, means a ballast water management system (BWMS) approved by a foreign flag administration in accordance with the standards set forth in the International Maritime Organization's International BWM Convention, and meeting all applicable requirements of U.S. law, and which is used in lieu of ballast water exchange.

Further Guidance –

- (1) The manufacturer of a foreign flag type-approved BWMS must request and receive a determination by the Coast Guard that the BWMS is acceptable as an AMS in accordance with 33 CFR §151.2026. Each vessel using an AMS must maintain on board a copy of the letter of acceptance issued to the manufacturer

by the Coast Guard. Further details regarding Coast Guard AMS acceptance are available at the CG-OES-3 website under the BWM Program.

- (2) In accordance with 33 CFR §151.1510 and §151.2025, an AMS installed on a vessel before the vessel's compliance date may be employed to comply with the regulations both before and after the vessel's compliance date as long as the AMS remains fully functional. An AMS installed on a vessel before its compliance date may not be used for more than 5 years after its compliance date, unless the Coast Guard has granted the vessel an extended compliance date in accordance with 33 CFR 151.2026(c).
 - (3) Prior to a vessel's compliance date, an AMS installed on a vessel may be used in lieu of ballast water exchange. See 33 CFR §151.1510(a)(1) and §151.2025(a)(3), as applicable.
 - (4) If the AMS fails before the vessel's compliance date, the vessel may use another allowable BWM method identified in 33 CFR §151.1510 or 33 CFR §2025(a), as applicable, including BWE.
 - (5) If the AMS fails after the vessel's compliance date and cannot be repaired, the vessel must use one of the other BWM practices and methods identified in 33 CFR §151.1510 and 33 CFR §151.2025, or have already received an extension letter under 33 CFR §151.1513 and 33 CFR §151.2036. However, BWE may only be used if approved by the District Commander or COTP.
 - (6) An AMS determination may be suspended, withdrawn, or terminated in accordance with 46 CFR 162.060-18 if the system is not in compliance with applicable requirements, is found to be unsuitable for its intended purpose, or is no longer manufactured or supported.
- b. *Ballast Tank*, as defined in 33 CFR §151.1504, means “any tank or hold on a vessel used for carrying ballast water, whether or not the tank or hold was designed for that purpose.”

Further Guidance –

- (1) Voids, cofferdams, and other spaces used to carry ballast water are considered ballast tanks.
- (2) Technical water tanks are dedicated tanks containing potable or non-potable water used to perform specific functions on board the vessel (e.g., wash down water, reserve boiler feed water, sprinkler system fresh water) and are not considered ballast tanks if they are not connected to the ballast system and are not used to control or maintain trim, draught, stability of, or stresses to the vessel.
- (3) Preload tanks are water tanks that may be fitted on self-elevating units or vessels (e.g., liftboats and MODUs) that are commonly referred to as jack-ups, jack-up rigs, or self-elevating units). Preload tanks are filled with seawater to correspond to the weight of the rig plus its full deck load and drill string weight when the vessel arrives at its intended elevating location, to test the seabed soils for a stable foundation for the unit to resist the effects of wind, wave, and current while the unit remains elevated with its full deck load and drill string. Once the desired preload is achieved, with adequate penetration into and support

from the seabed, the contents of the preload tanks are discharged at the same location. Preload tanks are not considered ballast tanks for the purposes of 33 CFR part 151 unless the tank is used to control or maintain trim, draught, stability of, or stresses on the unit or vessel during transit from one location to another. Preload tanks that have drawn ballast water from non-U.S. waters or from another COTP Zone should be thoroughly cleaned of water and sediments before taking on and discharging preload water at a site within U.S. waters. Sediments from another location, when mixed with waters taken at the preload location, could introduce invasive species into U.S. waters. The unit's BWM Plan (BWMP) should include a mandate to thoroughly clean preload tanks before taking on and discharging preload water at a drilling site in U.S. waters.

- c. *Ballast water*, as defined in 33 CFR §151.1504, means any water and suspended matter taken on board a vessel to control or maintain trim, draught, or stability of, or stresses to, the vessel, regardless of how it is carried.

Further Guidance –

- (1) In considering whether water stored in a “tank” on board a vessel is “ballast water” that must be managed in accordance with the BWM regulations, the purpose of the stored water must be assessed. If the water is taken on board to control or maintain, trim, draught, or stability of, or stresses to, the vessel, regardless of how it is carried, the water is “ballast water,” and the tank in which it is held is a “ballast tank.”
- (2) Vessels that operate exclusively with water sealed in a ballast tank (permanent ballast) that is changed only in connection with dry docking and water transferred into ballast tanks from a U.S. public water system (PWS) source are considered to have ballast water on board and are subject to 33 CFR 151 subpart C (BWM for Control of Nonindigenous Species in the Great Lakes and Hudson River) and 33 CFR 151 subpart D (BWM for Control of Nonindigenous Species in Waters of the United States).
- (3) Technical water is not considered ballast water if it is stored in dedicated tank(s) not connected to the ballast system, and is not used to control or maintain trim, draught, stability of, or stresses to the vessel.
- (4) Bilge water, condensate, runoff water, and similar water that collects in a space because of operational leakage or from the environment is not considered ballast water. This type of water should be handled in accordance with applicable standards (e.g., the U.S. EPA's Vessel General Permit regulations for discharges incidental to the normal operation of a vessel).
- (5) Preload tanks (as described above) are generally not considered ballast tanks and preload water may be discharged at the same site after establishing a satisfactory preload. A preload tank is also considered ballast tank for the purposes of 33 CFR part 151 when the tank is used to control or maintain trim, draught, stability of, or stresses on the unit or vessel during transit from one location to another. If ballast water from a location outside that COTP Zone is present in the preload tanks, the mixture of that water and the preload water may

not be discharged into waters of the United States unless it meets the requirements of 33 CFR §151.2025 or §151.2035(a), as applicable.

- d. *Ballast water discharge standard (BWDS)* means the numerical standard established by regulation at 33 CFR §151.1511 or §151.2030, as applicable.
- e. *Ballast water management system (BWMS)*, as defined in 33 CFR §151.1504, means any system that processes ballast water to kill, render harmless, or remove organisms. The BWMS includes all ballast water treatment equipment and all associated control and monitoring equipment.

Further Guidance –

- (1) BWMS includes Coast Guard type-approved BWMS per 46 CFR 162.060, and AMS that are approved under IMO requirements and accepted by the Coast Guard.
 - (2) A vessel that is past its compliance date as per 33 CFR §151.1512 and 33 CFR §151.2035, or past its extended compliance date issued in accordance with 33 CFR §151.1513 and 33 CFR §151.2036 for which one or more Coast Guard type-approved BWMS are available, should have one of these systems installed and operating if the vessel discharges ballast water into waters of the United States. Alternatively, a vessel may use water sourced from a PWS to comply with the BWDS, or choose not to discharge ballast water into waters of the United States.
- f. *Captain of the Port (COTP)*, as defined in 33 CFR §151.1504 and §151.2005, means the Coast Guard officer designated by the Commandant to command a COTP Zone as described in 33 CFR part 3.
 - g. *Commandant*, as defined in 33 CFR §151.1504, means the Commandant of the Coast Guard or an authorized representative.
 - h. *Constructed*, in respect to a vessel, as defined in 33 CFR §151.1504 and §151.2005, means a stage of construction during which—
 - (1) The keel of a vessel is laid;
 - (2) Construction identifiable with the specific vessel begins;
 - (3) Assembly of the vessel has begun and comprises at least 50 tons or 1 percent of the estimated mass of all structural material, whichever is less; or
 - (4) The vessel undergoes a major conversion.

Further Guidance - The date constructed is used to determine a vessel's original compliance date as provided for in tables §151.1512(b) and §151.2035(b) to 33 CFR §151.1512.

- i. *Exclusive Economic Zone (EEZ)*, as defined in 33 CFR §151.1504, means the area established by Presidential Proclamation Number 5030, dated March 10, 1983 (48

FR 10605, 3 CFR, 1983 Comp., p. 22), which extends from the baseline of the territorial sea of the United States seaward 200 nautical miles, and the equivalent zone of Canada.

- j. *First scheduled dry-docking* is the date from which a vessel's compliance date is determined, and refers to the date on which a vessel will be hauled out or placed in a dry-dock or slipway for the purpose of conducting a survey of the ship's hull.
- k. *Great Lakes*, as defined in 33 CFR §151.1504, means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, Lake Superior, and the connecting channels (Saint Mary's River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian border), and includes all other bodies of water within the drainage basin of such lakes and connecting channels.
- l. *Port*, as defined in 33 CFR §151.1504, means a terminal or group of terminals, or any place or facility that has been designated as a port by the COTP.
- m. *Port or place of departure*, as defined in 33 CFR §151.2005, means any port or place in which a vessel is anchored or moored.
- n. *Port or place of destination*, as defined in 33 CFR §151.2005, means any port or place in which a vessel is bound to, anchored, or moored.
- o. *Recreational vessel*, as defined in 46 U.S.C. 2101(25), means "a vessel being manufactured or operated primarily for pleasure; or leased, rented or chartered to another for the latter's pleasure."

Further Guidance - The ballast water regulations do not apply to recreational vessels as per 33 CFR §151.1502 and §151.2010. A recreational vessel does not include any vessel engaged in commercial service, time chartered, or voyage chartered to another. *Commercial service*, as defined in 46 U.S.C. 2101(5), includes "any type of trade or business involving the transportation of goods or individuals, except service performed by a combatant vessel." Examples of commercial service are vessels that carry passengers for hire, are hired for a specific voyage or for a specific time charter, or are hired with a specific crew. However, a recreational vessel chartered through a valid bareboat charter (i.e., type of demise charter where the charterer has complete management, control, and operation of the vessel) and not engaged in commercial service would continue to be considered a recreational vessel. Yachts engaged in commercial service and equipped with ballast tanks are considered non-recreational vessels and must comply with BWM regulations. Yachts equipped with ballast tanks, hired with a valid bareboat charter, and not engaged in commercial service would be considered recreational vessels, and BWM regulations would not apply.

- p. *Sediments*, as defined in 33 CFR §151.1504, means any matter settled out of ballast water within a vessel.

Further Guidance - Sediments found in ballast tanks can harbor potentially invasive organisms, and measures to ensure that unmanaged ballast tank sediments are not discharged overboard should be included in BWMP. If a regulated vessel uses water from a U.S. PWS as ballast water, or transitions from operating exclusively in one COTP Zone to begin operations in a new COTP Zone, documentation should be available that shows the vessel’s ballast tanks were previously cleaned, including removal of all residual sediment, prior to the introduction of the water sourced from the PWS or water taken up in the new COTP Zone (i.e., water from one COTP Zone cannot be commingled with water from another COTP Zone).

- q. *Waters of the United States*, and *U.S. waters* mean waters subject to the jurisdiction of the United States as defined in 33 CFR 2.38, including the navigable waters of the United States. For 33 CFR part 151 subparts C and D, the navigable waters include internal waters and the territorial sea as extended to 12 nautical miles from the baseline, in accordance with Presidential Proclamation No. 5928 of December 27, 1988.

Table 1 to §151.2015—Table of 33 CFR §151.2015 Specific Exemptions for Types of Vessels

Vessel category	Requirement category		
	§151.2025 (Management)	§151.2060 (Reporting)	§151.2070 (Recordkeeping)
Department of Defense or Coast Guard vessel subject to 46 U.S.C. 4713 ¹	Exempt	Exempt	Exempt
Vessel of the Armed Forces subject to the “Uniform National Discharge Standards for Vessels of the Armed Forces” (33 U.S.C. 1322(n)) ²	Exempt	Exempt	Exempt
Crude oil tanker qualified for and engaged in coastwise trade	Exempt	Exempt	Exempt
Vessel operates exclusively on voyages between ports or places within a single COTP Zone	Exempt	Applicable	Exempt
Seagoing vessel operates on voyages between ports or places in more than a single COTP Zone, does not operate outside of EEZ, and ≤ 1600 GRT or ≤ 3000 GT ITC	Exempt	Applicable	Applicable
Non-seagoing vessel	Exempt	Applicable	Applicable (unless operating exclusively on voyages between ports or places within a single COTP Zone).
Vessel operates between ports or places in more than a single COTP Zone and takes on and discharges ballast water exclusively in one COTP Zone	Exempt	Applicable	Applicable

¹ Note that such vessels are exempt from subparts C and D in their entirety as per 33 CFR 151.1502 and 151.2015(a).

² Same as footnote 2 above.

2. Exemptions

- a. The applicability of the management, reporting, and recordkeeping requirements to different vessel categories is summarized in Table 1 to §151.2015. This table is referenced in 33 CFR §151.1502 for vessels operating in the Great Lakes and Hudson River.

B. BWM REPORTING GUIDANCE.

Vessels subject to 33 CFR 151 subpart C or subpart D must comply with reporting requirements listed in 33 CFR §151.2060 for ballast water practices on board. The requirement also simplifies and streamlines ballast water reporting and allows most vessels to submit ballast water reports after arrival at a port or place of destination, except for vessels bound for the Great Lakes and the Hudson River, where a 24-hour report prior to arrival is required.

Note: Vessels equipped with ballast tanks that operate exclusively on voyages between ports or places within a single COTP Zone must submit an annual report of their ballast water management practices.

1. Reporting Requirements. 33 CFR §151.2060 outlines BWM reporting requirements.
 - a. Ballast water reporting requirements exist for each vessel subject to this subpart, as well as subpart C, as per 33 CFR §151.1502.
 - b. The master, owner, operator, agent, or person in charge of a vessel subject to the regulations must submit a ballast water report to the National Ballast Information Clearinghouse (NBIC) by electronic ballast water report format using methods specified at the NBIC website unless operating exclusively on voyages between ports or places located within a single COTP Zone. The ballast water report must include the information listed in paragraph f. below and must be submitted as outlined in paragraph c. through e. below.
 - c. Any vessel bound for the Great Lakes from outside the EEZ must submit a ballast water report at least 24 hours before the vessel arrives in Montreal, Quebec. Vessels that are not U.S. or Canadian flag vessels may complete the St. Lawrence Seaway Ballast Water Reporting Form and submit it in accordance with the applicable Seaway notice as an alternative to this requirement.
 - d. Any vessel bound for the Hudson River north of the George Washington Bridge that enters from outside the EEZ must submit a ballast water report at least 24 hours before the vessel enters New York, NY.
 - e. Any vessel equipped with ballast tanks and bound for ports or places in the United States not addressed in paragraphs 1.c. and 1.d. above must submit the ballast water report no later than 6 hours after arrival at the port or place

of destination, or prior to departure from that port or place of destination, whichever is earlier.

- f. The ballast water report must include the following information:
- (1) *Vessel information.* This includes the vessel's name, International Maritime Organization (IMO) number, or, if an IMO number is not issued, other vessel identification number such as the official number, state number, or Coast Guard number, country of registry, owner or operator name, vessel type, and tonnage.
 - (2) *Voyage information.* This includes the port and date of arrival, name and contact information of the person submitting the form, last port and country of call, and next port and country of call.
 - (3) *Ballast water information.* This includes the vessel's total ballast water capacity, total number of ballast water tanks, total volume of ballast water onboard, total number of ballast water tanks in ballast, and the identification of ballast water management method used.
 - (4) *Information on ballast water tanks that are to be discharged into the waters of the United States or to a reception facility.* Include the following for each tank discharged:
 - (a) The numerical designation, type and capacity of the ballast tank.
 - (b) The source of the ballast water. This includes date(s), location(s), and volume(s). If a tank has undergone ballast water exchange, provide the loading port of the ballast water that was discharged during the exchange.
 - (c) The date(s), starting location(s), ending location(s), volume(s), and method(s) of ballast water management.
 - (d) The date(s), location(s), and volume(s) of any ballast water discharged into the waters of the United States or to a reception facility.
 - (5) *Certificate of accurate information.* Include the name and title of the individual (*i.e.*, master, owner, operator, agent, person in charge) attesting to the accuracy of the information provided and that the activities were in accordance with the BWMP required by 33 CFR §151.2050(g). If exceptional circumstances required deviation from the plan, the details surrounding the need for deviation and associated actions must be explained.
- g. If the information submitted in accordance with paragraph f. above changes, the master, owner, operator, agent, or person in charge of the vessel must submit an amended report before the vessel departs the waters of the United States, or not later than 24 hours after departure from the port or place, whichever is earlier.
- h. The master, owner, operator, agent, or person in charge of a vessel operating on voyages exclusively between ports or places within a single COTP Zone, and subject to 33 CFR 151 subpart D, must submit the information required

by paragraph i. below to NBIC by electronic format (Annual Ballast Water Summary Report) using methods specified at the NBIC website. The Annual Ballast Water Summary Report is required for a period of 3 years on the following schedule:

- (1) Report on the vessel's ballasting practices for calendar year 2016 due no later than March 31, 2017.
- (2) Report on the vessel's ballasting practices for calendar year 2017 due no later than March 31, 2018.
- (3) Report on the vessel's ballasting practices for calendar year 2018 due no later than March 31, 2019.

- i. The Annual Ballast Water Summary Report for vessels operating on voyages exclusively between ports or places within a single COTP Zone, and subject to 33 CFR 151 subpart D, must include the following information:

- (1) *Vessel information.* This includes name, identification number, vessel type, operator, tonnage, call sign and COTP Zone of operation.
- (2) *Ballast information.* This includes the number of ballast tanks and total ballast water capacity.
- (3) *Operational information.* This includes the estimated number of times ballast water is discharged, estimated volume of ballast water discharged each time, primary port of ballast water loading, primary port of ballast water discharge, and certification of compliance with 33 CFR §151.2050.

2. Equivalent Reporting Methods.

- a. As permitted by 33 CFR §151.2065, the Coast Guard offers an alternative for an owner, operator, master, agent, or person in charge to submit required Ballast Water Management (BWM) Reports in a single batch report on a monthly basis, instead of on a port-to-port schedule as required under 33 CFR §151.2060(b)(3). For details and more information on this alternative, please go to the NBIC website.
- b. Any owner, operator, master, agent, or person in charge who believes there is a more efficient way to report the ballast water activities of their vessel or vessels may submit a written request proposing an alternative reporting method specific to their operations. The proposed alternative should be as effective as the reporting requirements in 33 CFR §151.2060. The request should include the following:
 - (1) The name of the vessel or vessels that the alternative method will cover;
 - (2) An explanation of the information submission process and frequency; and
 - (3) An explanation as to why compliance with 33 CFR §151.2060 is economically or physically impractical.

Requests for consideration and approval of an alternative method of reporting can be submitted in writing to the Chief, Environmental Standards Division (CG-OES-3) email address (see Enclosure (3)). They will normally be reviewed within 30 days of receipt.

3. Seasonal Operations. For vessels that operate exclusively in a single COTP Zone during distinct seasonal periods of the year, the Coast Guard will accept a summary report that complies with the requirements of 33 CFR §151.2060(f)(1) through (3). For vessels that shift from one COTP Zone to another, the vessel master, owner, operator, agent of person in charge must ensure that an appropriate ballast water report for the single voyage to the new COTP Zone is filed with NBIC. If the vessel then begins to operate on voyages exclusively between ports or places within the new COTP Zone, it may submit the information for the follow-on time period in a summary report that complies with the requirements of 33 CFR §151.2060(f)(1) through (3).
4. Port State Control and Flag State Inspections. The Coast Guard will check compliance with ballast water reporting requirements as part of all port state control examinations and regularly scheduled flag state vessel inspections.

C. BWM RECORDKEEPING.

1. BWM recordkeeping requirements are provided in 33 CFR §151.2070. The master, owner, operator, agent, or person in charge of a vessel bound for a port or place in the United States, unless specifically exempted by 33 CFR §151.2015, must ensure the maintenance of written or digital records that include the information required to be reported by 33 CFR §151.2060, and the sediment information required by 33 CFR §151.2070(a)(1).
 - a. *Discharge of sediment*. If a vessel discharged sediment within the jurisdiction of the United States, the name and location of the facility where sediment disposal took place must be included in the report.
 - b. *Certification of accurate information*. Include the master, owner, operator, agent, person in charge, or responsible officer's printed name, title, and signature attesting to the accuracy of the information provided and that activities were in accordance with the BWMP as required by 33 CFR §151.2050(g). If exceptional circumstances required deviation from the plan, the details surrounding the need for deviation and associated actions must be explained. The signature requirement may be satisfied by affirming the certification portion of the electronic ballast water report.
2. The master, owner, operator, agent, or person in charge of a vessel subject to recordkeeping must retain a signed copy of the information in Section C.1 onboard the vessel for 2 years.
3. The recordkeeping requirements may be met by maintaining a copy of the reporting form completed in accordance with 33 CFR §151.2060, in addition to maintaining a record of the sediment information discussed above in Section C.1.a. These records may be stored on digital media, but must be readily viewable by the Coast Guard during an inspection.

4. The master, owner, operator, agent, or person in charge of a vessel subject to recordkeeping must retain the monitoring records required in 46 CFR 162.060-20(b) for 2 years. These records may be stored on digital media but must be readily viewable by the Coast Guard during an inspection.

D. COMPLIANCE GUIDANCE.

1. **BWM Requirements.** Ballast water management requirements are provided for in 33 CFR §151.1510 and §151.2025 for vessels subject to subpart C and D, respectively. The master, owner, operator, or person in charge of a vessel equipped with ballast tanks must employ one of the ballast water management practices and methods listed below unless otherwise exempted. See “Exemptions” in Section A.2 above.
 - a. Install and operate a BWMS that has been approved by the Coast Guard under 46 CFR part 162 if the vessel discharges ballast water in waters of the United States. Alternatively, a Coast Guard accepted Alternative Management System (AMS) may be used to discharge ballast water in waters of the United States for a specific time as discussed in Section D.3 below;
 - b. Use water only from a U.S. Public Water System (PWS), as defined in 40 CFR 141.2, that meets the requirements of 40 CFR part 141 and 40 CFR part 143 as ballast water. Vessels may use water only from a U.S. PWS as ballast water in accordance with 33 CFR §151.2025(a)(2).³ The vessel must maintain an accurate record of where the water was sourced and include a receipt, invoice, or other documentation from the PWS indicating that the water came from that system. Additionally, the master, owner, operator, agent, or person in charge must certify that the crew previously cleaned the ballast tanks, including removing all residual sediments, and did not subsequently or at any other time introduce ambient water from any location to the ballast tanks and supply lines;
 - c. If eligible, perform a complete ballast water exchange (BWE) in an area 200 nautical miles from any shore and, if subject to 33 CFR 151 Subpart C, in waters more than 2,000m deep. If a vessel’s compliance date has passed, the vessel is no longer eligible to use BWE as a compliance method. Exceptions are permitted for vessels enrolled in STEP, as discussed in Section D.5 below.
 - d. Discharge to a facility onshore or to another vessel for purposes of treatment (permitted in waters of the United States other than the Great Lakes and Hudson River); or
 - e. Discharge no ballast water into waters of the United States (for vessels operating on the Great Lakes and Hudson River, the COTP may seal any tank or hold containing ballast water).
2. **Coast Guard type-approved BWMS.** Coast Guard type-approved BWMS will be listed on Coast Guard Maritime Information Exchange (CGMIX); refer to the CGMIX website

³ Water from a Canadian public water system is also deemed acceptable.

under Approved Equipment List. For more information, see OES-MSIB Number 003/17 at the MSIB website.

3. Alternate Management System (AMS).

- a. 33 CFR §151.1510(a)(1) and §151.2025(a)(3) allow a vessel to use an Alternate Management System (AMS) under certain circumstances. Foreign flag administrations have been type-approving BWMS in accordance with IMO guidelines since the adoption of the BWM Convention. The Coast Guard recognizes a number of foreign flag administration-approved systems that were installed on vessels before any U.S. type-approved BWMS became available for installation. 33 CFR §151.2026 outlines the process for applying for a determination that a BWMS is accepted as an AMS. Regulations in 46 CFR 162.060 contain procedures and requirements for approval of a BWMS.
- b. Use of an AMS is limited to 5 years from the vessel's compliance date or extended compliance date. Once BWMS are type-approved by the Coast Guard and available for a given class of vessel, those vessels will no longer be able to install AMS if they intend to discharge ballast water into waters of the United States. A vessel owner or operator that chooses to install an AMS rather than a CG type approved BWMS should retain records that confirm that no CG type approved system was suitable for the vessel when the AMS was installed.
 - (1) If, during the 5-year period after the vessel's compliance date, the AMS becomes unserviceable and a Coast Guard type-approved BWMS is available for installation, the AMS may not be replaced with a different AMS. The vessel must either have a Coast Guard type-approved BWMS installed, replace the AMS with the same AMS identification number and model, or choose another approved BWM method.
 - (2) After 5 years, a Coast Guard type-approved BWMS must be installed, or another approved BWM method must be employed.
 - (3) If a Coast Guard accepted AMS stops operating properly during a voyage, or the vessel's BWM method is unexpectedly unavailable, the person directing the movement of the vessel must report the issue as soon as practicable to the nearest COTP (or District Commander) where the ballast water discharge operations are occurring (see 33 CFR §151.2040(b)).
- c. **An owner or operator who installs a BWMS that is accepted as an AMS should be aware that AMS manufacturers must obtain Coast Guard type-approval in order for the vessel to continue operating the BWMS beyond the 5-year AMS acceptance period discussed in paragraph 3.b. above.** Owners and operators of vessels using an AMS that does not receive Coast Guard type-approval before the expiration of the 5-year AMS acceptance period will need to either install a Coast Guard type-approved BWMS prior to continued ballast water operations in waters of the United States, or employ one of the other BWM practices and methods set forth in the regulations.

- d. In accordance with the criteria set forth in 46 CFR 162.060-18, Commandant (CG-OES) may suspend or withdraw an approval of an AMS, at which time that AMS will no longer be considered as an approved management method.
 - e. Any vessel that uses a foreign flag type-approved BWMS that *has not* been accepted by the Coast Guard as an AMS will not be permitted to discharge treated ballast water in waters of the United States. Such vessels may:
 - (1) Continue to perform BWE in accordance with existing regulations until such time as the vessel is required to employ an approved BWM method in accordance with the implementation schedule found in §151.2035(b); or
 - (2) Apply for an extension of compliance date in accordance with 33 CFR §151.2036. See Section D.6. below for additional guidance.
4. Discharge of Ballast Water in Extraordinary Circumstances. In the vessel's BWM Plan required by 33 CFR §151.2050(g), the vessel owner or operator should promote an effective BWM strategy and include directions and procedures for the master to follow in the event of an extraordinary circumstance. The following extraordinary circumstances are derived from regulatory requirements and warrant consideration in the BWM plan.
- a. *Circumstance 1: Ballast water exchange (BWE) is an option for a vessel operating in the Great Lakes and Hudson River [33 CFR §151.1515(a)].* If the vessel is allowed to use BWE because it has not reached its compliance date per 33 CFR table §151.1512(b), or has been given an extension of the compliance date per 33 CFR §151.1513, and, because of some equipment failure or extraordinary condition, is prevented from conducting a compliant BWE, the master of the vessel must request permission from the COTP to exchange ballast water in an area agreed upon between the COTP and master. The request should provide a complete explanation as to why a compliant BWE was not possible, and should describe the particulars of the proposed BWE. If the request is granted by the COTP, the master may then conduct the exchange and discharge of the ballast water in the area authorized by the COTP.
 - b. *Circumstance 2: BWE is no longer an option for a vessel operating in the Great Lakes and Hudson River [33 CFR §151.1515(b)].* If the vessel is no longer allowed to conduct BWE under 33 CFR §151.1512(b) and the BWMS required by subpart C stops operating properly during the voyage, or the accepted BWM method becomes unexpectedly unavailable, the master of the vessel must report this immediately to the COTP and follow the directions of the COTP or Ninth Coast Guard District Commander, as appropriate. Using guidance provided in the vessel's BWM Plan, the person making the report should be prepared to discuss alternative BWM strategies available to the vessel based on its capabilities, route and voyage duration. An alternative strategy that results in the discharge of untreated BW into the waters of the U.S. will only be authorized for safety concerns, and should not be implemented unless authorized by the COTP or District Commander.
 - c. *Circumstance 3: Vessels not operating in the Great Lakes and Hudson River and which have not reached their compliance date per 33 CFR table §151.2035(b), or*

have been given an extension of the compliance date per 33 CFR §151.2036 [33 CFR §151.2040(a)]. Per 33 CFR §151.2040(a), a vessel that cannot practicably meet the requirements of 33 CFR §151.2025(a) because either it (1) does not proceed more than 200 nautical miles from shore for a sufficient time to conduct a BWE or (2) has identified safety or stability concerns may be allowed to discharge ballast water in waters of the United States other than the Great Lakes and the Hudson River north of the George Washington Bridge.

- (1) On certain voyages (e.g., New York to Savannah, Puerto Rico to Miami), a vessel may not normally proceed more than 200 nautical miles from shore as it travels to its next port. In such cases, the vessel would not be expected to travel more than 200 miles from shore for a period sufficient to conduct a compliant BWE. The master of the vessel is not required to contact the COTP for prior approval of this extraordinary circumstance; however, ballast water records must be made available to the local COTP upon request as per §151.2040(a)(3).
 - (2) A master of a vessel that must conduct a ballast water discharge for safety or stability concerns may be allowed by the COTP to conduct this discharge when and where appropriate as per §151.2040(a)(2). The master should satisfactorily explain why the ballast water operation is necessary in order to gain approval from the COTP prior to discharge of the ballast water. Ballast water record must be made available to the local COTP upon request as per §151.2040(a)(3). For example:
 - (a) A vessel that has already met requirements for a BWE and discharge into U.S. waters may need to take on additional ballast water to make a safe transit under a bridge because of unexpected high water or a late change to its itinerary.
 - (b) A vessel may need to discharge additional ballast water during cargo operations due to unexpectedly low water while in port. The COTP may allow the discharge of this additional ballast water only in an amount necessary to ensure the safety of the vessel.
 - (c) A vessel cannot safely undertake a complete BWE on the open ocean due to unusual freeboard, loading conditions, or adverse sea state and weather conditions.
- d. *Circumstance 4: BWMS stops operating properly or the BWM method is unexpectedly unavailable [33 CFR §151.2040(b)].* If the vessel is no longer allowed to conduct BWE under 33 CFR §151.2035(b) and the BWMS required by subpart D stops operating properly during the voyage, or the accepted BWM method becomes unexpectedly unavailable, the person directing the movement of the vessel must report this issue as soon as practicable to the nearest COTP, or District Commander, where the ballast water discharge operations are scheduled to occur. The person directing the movement of the vessel must follow the directions of the COTP or District Commander, as appropriate. If the vessel will discharge ballast water in more than one COTP Zone, the person directing the movement of the vessel should contact each COTP or District Commander, as appropriate. The contact information for COTP Zones can be found at the Coast Guard Homeport website under “Port Directory.” Further guidance is included below.

- (1) The COTP may allow the vessel to use any of the other BWM methods permitted by 33 CFR §151.2025(a).
 - (2) A BWMS that was unavailable on a previous voyage will generally not be considered “unexpectedly unavailable.” The BWMS is expected to be repaired prior to its next discharge into waters of the United States, unless the vessel chooses to comply with 33 CFR §151.2025(a)(2), (4), or (5) for the next intended discharge.
 - (3) A vessel that normally uses one of the other BWM methods (i.e., 33 CFR §151.2025 (2), (4), or (5)) that was unavailable on a previous voyage and remains unavailable is not considered “unexpectedly unavailable.” A COTP may require a vessel to deviate from, or delay, its voyage if the COTP allows BWE as a method to comply with 33 CFR §151.2040(b).
 - (4) If the vessel cannot employ one of the BWM methods permitted by 33 CFR §151.2025(a) and voyage or safety concerns apply, the COTP may allow the vessel to discharge ballast water that was not treated or managed in accordance with 33 CFR §151.2025(a) provided the discharge does not take place in waters covered by 33 CFR §151 Subpart C. If the COTP allows such a discharge, the discharge must be the minimum amount necessary to ensure the safety of the vessel.
5. Shipboard Technology Evaluation Program (STEP): The STEP is a voluntary program available to all vessels subject to the Coast Guard’s ballast water management regulations. NVIC 1-04 implements the STEP and can be found at the NVIC Home website. The STEP is intended to facilitate the development of effective ballast water management technologies. A copy of the letter enrolling the vessel in a STEP must be kept on board and should be made available to the Coast Guard upon request.
- a. A vessel enrolled in a STEP may use the BWMS installed on board as its BWM method. NVIC 01-04 provides guidance on STEP compliance and contains, among other things, STEP vessel documentation, performance log requirements, and a verification checklist for Coast Guard examiners.
 - b. All vessels operating installed BWMS for type-approval testing and evaluation must enroll in a STEP in order to discharge treated ballast water into U.S. waters.
6. Extension Requests. In accordance with 33 CFR §151.1513 and 33 CFR §151.2036, the Coast Guard may grant an extension to a vessel’s compliance date only in those cases where the master, owner, operator, agent, or person in charge of a vessel can document that, despite all efforts, compliance with the requirements under 33 CFR §151.1510 or §151.2025 is not possible. At this time, there are six type approved BWMS. The type approved BWMS cover nearly all classes of vessels and are compatible with a broad range of operational requirements.
- a. Every extension request must include documentation sufficient to allow the Coast Guard to validate the assertion that, despite all efforts, compliance with the requirements under 33 CFR §151.1510 or 33 CFR §151.2025 by the date stipulated in

the implementation schedule, or the end date specified in the current extension granted by the Coast Guard, is not possible. The Coast Guard may request additional documentation prior to reaching a final decision on an extension request. If a vessel has satisfactorily documented that compliance is not possible, an extension may be granted for no longer than the minimum time needed, as determined by the Coast Guard, for the vessel to comply with the applicable regulatory requirements (33 CFR §151.1510 or 33 CFR §151.2030).

- b. Pursuant to these regulations, circumstances that may merit an extension include documentation supporting the need for additional time to install an acquired BWMS that has been type approved by the Coast Guard, or one that is expected to be type approved by the Coast Guard. However, if an extension is granted in this case and the BWMS does not receive type approval before the extended compliance date, additional extensions will not be granted. Furthermore, as this system was not installed as an AMS, the 5 year period normally allowed for AMS use beyond the vessel's compliance date is not applicable. Owners or operators are expected to replace such systems with a Coast Guard type-approved BWMS or employ one of the practices and methods under 33 CFR §151.1510(a) and 33 CFR §151.2025(a) if they intend to discharge ballast water into waters of the United States.
- c. Extensions will not be granted to vessels that plan to install an AMS. Also, a vessel with an installed AMS is not eligible for an extension.
- d. As stated in 33 CFR §151.1513 or 33 CFR §151.2036, extension requests must be received by the Coast Guard at least 12 months prior to a vessel's compliance date. To allow for appropriate administrative processing, and to minimize a back log in requests, the Coast Guard recommends vessel owner or operators submit extension requests no more than 18 months in advance of a vessel's compliance date.
- e. Extensions may be granted for no longer than the minimum time needed for the vessel to comply with the requirements. However, the extension will generally not be longer than 12 months from the vessel's compliance date and may not necessarily coincide with the vessel's next scheduled drydock date.
- f. Previously issued extension letters will be honored unless granted pursuant to mistake, fraud, or other circumstances warranting rescission. Previously issued extension letters will remain valid until the extended compliance date specified in the extension letter. Extension letters include the vessel's IMO number, which does not change, and transfer automatically upon changes in vessel name or ownership.
- g. Extension requests must be written in English and can be submitted electronically to CG-OES email address, with an application spreadsheet with recommended information included. An extension request will receive initial review and the requester should expect to receive notification of receipt within 30 days. A copy of the application spreadsheet is available for download on the Environmental and Standards Division (CG-OES-3) website.

7. BWM Plan (BWMP). Vessel owners or operators must maintain the BWMP specific for the vessel and implement the BWM strategy following the requirements in 33 CFR §151.2050(g). For vessels subject to the International Safety Management (ISM) Code, owners or operators should incorporate BWM requirements as part of the vessel's Safety and Environmental Protection Policy in accordance with paragraph 1.4 of the ISM Code. It is important the BWMP be reviewed and updated routinely by examining and documenting compliance options, not only for typical shipboard operations, but for those situations where the vessel's routine means of complying with a BWM requirement, such as the use of a BWMS, AMS or water from a U.S. PWS is not available. Planning for BWM contingencies in advance provides the vessel crew an opportunity to discuss, coordinate, and implement the vessel's BWM strategy in order to mitigate an extraordinary circumstance. This means that vessel owners or operators should understand the BWM practice or method that will be used, train the crew in proper procedures and use of any BWM equipment. The BWMP should also outline communication procedures with the COTP and District Commander and reporting to the National Ballast Information Clearinghouse (NBIC). The BWMP should provide succinct directions and alternate measures regarding contingencies to be taken if the intended compliance practice or method is unexpectedly unavailable.

8. Compliance Verification. Coast Guard ballast water compliance verifications are conducted to ensure regulatory compliance and determine whether reasons or clear grounds exist to conduct a more detailed inspection. Compliance activities will typically be conducted during regularly scheduled port state control examinations on board foreign flag vessels, inspections for certification (or mid-period inspections) on board U.S. vessels, and whenever there is reason to believe that a vessel is not in compliance with U.S. BWM regulations.
 - a. A compliance inspection or examination may, at a minimum, include the following actions:
 - (1) Determination as to which of the approved BWM methods (in 33 CFR §151.1510 or §151.2025) the vessel is using to meet the BWDS regulatory requirements, such as:
 - (a) Coast Guard type-approved BWMS, Alternate Management System (AMS),
 - (b) water from a U.S. public water system (PWS),
 - (c) BWE (if allowed based on the vessel's compliance date or extended compliance date), or
 - (d) no ballast water discharge into U.S. waters, or ballast water discharge to a reception facility.
 - (2) Verify the BWMP is onboard and contains the topics specified in 33 CFR §151.2050(g). A BWMP prepared for a group of identical sister vessels is acceptable.
 - (3) Assessment of the crew's familiarity with essential shipboard procedures pertaining to ballast water compliance.
 - (4) Inspection of visible portions of the vessel hull, anchor chain, and anchor for growth of organisms and sediment buildup.

- (5) If a Coast Guard type-approved BWMS is installed, verification that the BWMS has the appropriate manufacturer's nameplate, the Operation, Maintenance, and Safety Manual (OMSM) is on board, and sampling ports are in compliance with U.S. regulations. See 46 CFR 162.060.
 - (6) If an AMS is installed, verification that the system is on the list of Coast Guard-accepted AMS's published on the CG-OES-3 website.
 - (7) If the vessel has a compliance date extension letter issued by the Coast Guard, determination as to whether the vessel's discharge of ballast water into U.S. waters complies with the conditions specified on the extension letter.
 - (8) For vessels using ballast water from a U.S. PWS, examination of records that validate that the vessel's tanks were cleaned before it accepted U.S. PWS water, as required by 33 CFR §151.2025, and a determination of whether there is a receipt, invoice, or other documentation from the U.S. PWS indicating that the water came from that system.
 - (9) Confirmation as to whether ballast water records are kept in accordance with 33 CFR §151.2070.
 - (10) Review of the ballast water report for the vessel's current visit, if applicable. Determination of whether the vessel submitted the required ballast water report under 33 CFR §151.2060 upon arrival and for any previous arrival in the United States.⁴ In some cases, the timing of the inspection or exam may prevent this determination from being made. For example, a vessel arrives to a port or place of destination, other than the Great Lakes and the Hudson River, where the report is required to be submitted no later than six hours after arrival and the inspection or exam is conducted within six hours after the vessel's arrival.⁵
- b. If a vessel is discharging ballast water during the inspection or examination, the following actions should occur:
- (1) Determination of whether the BWMS is operating properly and in accordance with the BWM plan or Operation, Maintenance, and Safety Manual (OMSM).
 - (2) Verification that the discharge is not in violation of 33 CFR §151.2050 (a).
 - (3) If a Coast Guard type-approved BWMS is installed, verification that the BWMS has the appropriate manufacturer's nameplate, the OMSM is on board, and sampling ports are in compliance with U.S. regulations. See 46 CFR 162.060.
 - (4) If an AMS is installed, verification that the system is on the list of Coast Guard-accepted AMS's published on the CG-OES-3 website.
 - (5) If the vessel has a compliance date extension letter issued by the Coast Guard, determination as to whether the vessel's discharge of ballast water into U.S. waters complies with the conditions specified on the extension letter.

⁴ Reports for each arrival must be submitted no later than 6 hours after arrival or prior to departure, whichever is the shorter time. Arrivals to the GL must report 24 hours prior to arrival to Montreal or Massena. See 33 CFR 151.2060.

⁵ If Coast Guard personnel visit the vessel upon arrival, the vessel may not have made the required ballast water report. The Coast Guard is not required to delay its inspection of the vessel to see this report; however during the inspection and absent the required report, Coast Guard personnel should inquire into the details of what the report will specify. Also, vessels that arrive in port but must wait until reaching the loading or discharge facility may delay the required ballast water report as necessary to ensure the report is accurate. In such cases, the required report must be made to the NBIC before departing port.

- (6) Verify the BWMP is onboard and contains the topics specified in 33 CFR §151.2050(g).
- c. A more detailed inspection may be warranted if inspectors or examiners receive information indicating that the vessel is not in compliance with the applicable ballast water requirements. A more detailed inspection may include the following non-exhaustive steps:
 - (1) Items listed in paragraphs 8.a. and 8.b. (above).
 - (2) In-depth inspection into possible non-compliant areas.
 - (3) Observation of the operation of the BWMS.
 - (4) Interview of the crew to determine whether the BWMS manufacturer's recommended procedures were followed.
 - (5) Examination of monitoring data and BWMS control system data.
 - (6) Lab analysis of treated ballast water if discharge indicates non-compliance with the BWDS. Inspectors may visually inspect and sample to determine presence of live organisms.
- d. Questions and concerns regarding compliance or the Coast Guard's BWM Program may be submitted to CG-CVC's email address, with the following text entered in the subject line: "U.S. BW Compliance Inquiry."

E. ENFORCEMENT.

1. Introduction. In accordance with 33 CFR §151.2075, the master, owner, operator, agent, or person in charge of a vessel must provide the COTP with access to the vessel in order to take samples of ballast water and sediment, examine documents, and make other appropriate inquiries to assess the compliance of any vessel subject to the ballast water management regulations. Additionally, records must be provided to the COTP upon request, as specified in the recordkeeping section of 33 CFR §151.2070.
 - a. When the Coast Guard identifies the potential for a future violation, COTPs and OCMI should engage with the master, owner, operator, agent, or person in charge of a vessel as early as possible to provide education on the BWM requirements to prevent a violation. COTP Orders or other Operational Control measures should be leveraged, as necessary, to prevent violations from occurring. For example, a vessel in ballast and past its compliance date submits an Advance Notice of Arrival (ANOA) for a U.S. port with the intent to load cargo. If the COTP or Officer in Charge, Marine Inspection (OCMI) has reason to believe the vessel may not comply with the BW regulatory requirements, the master, owner, operator or other vessel representative should be contacted to determine the facts and ensure a clear understanding of the BWM requirements before the vessel encounters a potential violation. The COTP or OCMI may initiate control actions and requirements if necessary to ensure compliance.

- b. When a vessel violates the mandatory BWM requirements, the Coast Guard should educate the owner or operator about the applicable regulation(s) and further initiate warnings and other enforcement actions listed below. COTPs or OCMI's should consider the full range of enforcement options and ensure that the most effective and appropriate actions are employed to gain compliance. Enforcement actions should generally follow a tiered approach that includes issuing Letters of Warning (LOW), Notices of Violation (NOV), civil penalty actions, Suspension and Revocation (S&R) proceedings, and possibly criminal charges for more egregious violations of U.S. laws or regulations. For all BWM enforcement actions taken, the appropriate involved parties should be linked to the respective enforcement activity in the Coast Guard's Marine Information for Safety and Law Enforcement (MISLE) database.

2. BWM Enforcement Options.

- a. Education and Compliance Requirements. The goal of education is to ensure that all vessel owners and operators are notified of their BWM obligations through outreach efforts before higher level enforcement actions become necessary. When a vessel inspector or examiner finds the crew is not familiar with the BWM regulations and requirements, the vessel inspector or examiner should educate the crew with regard to BWM regulations and document it in MISLE as a Special Note. The Special Note must read: "Guidance on the 2012 BWM regulations was provided to the vessel and its operator, [List Name and IMO Company Identification Number of the company identified in Blocks 9 and 10 of the vessel's CSR]." The Retention Date for this Special Note should be set for 10 years from the date the entry was made. The vessel history recorded in MISLE should be considered if future enforcement action is initiated.
- b. Captain of the Port (COTP) Orders. Under 33 U.S.C. 1223(b), a COTP Order may serve as an appropriate mechanism to achieve compliance with the applicable BWM regulations.
- c. Letters of Warning (LOW). A LOW is an enforcement action that is appropriate for giving formal written notice of minor violations. There are two types of LOWs: a LOW in lieu of Civil Penalty, and a LOW in lieu of Suspension and Revocation (S&R). See Appendix A to Enclosure (1) for examples of each.

- (1) If the OCMI or COTP determines there is evidence of a violation of the mandatory BWM requirements, a LOW in lieu of Civil Penalty may be issued if:
 - (a) The violation does not represent a significant threat to health, safety, or the environment;
 - (b) The violation was not intentional;
 - (c) There has not been a previous violation of the exact same offense within the last 2-year period;
 - (d) There has not been a previous violation of different statutes or regulations within the last 1-year period; and,

- (e) There is not a total of more than three violations of different statutes or regulations during any single detection activity.
- (2) If the OCMI or COTP determines there is evidence that a U.S. credentialed mariner violated the mandatory BWM requirements, a LOW in lieu of S&R may be issued as long as none of the following occurs:
- (a) Any act or offense for which revocation is mandatory or sought as outlined in 46 CFR 5.59 and 46 CFR 5.61;
 - (b) Any offense listed in 46 CFR table 5.569 – Suggested Range of an Appropriate Order for which the minimum recommended order is a suspension of 3 months or longer; or
 - (c) Any second enforcement action against a merchant mariner’s credential within a 3-year period.

In all cases, it is critical to gather sufficient evidence to support the elements of the violation, because declining a LOW will result in the initiation of civil penalty or S&R proceedings.

Warnings may be appropriate for the majority of offenses routinely encountered. Refer to the Marine Safety Manual Vol. V (COMDTINST M16000.10 series) and Coast Guard Tactics, Techniques, and Procedures 3-72.7 (CGTTP 3-72.7) for additional details on appropriate use of warnings.

- d. Notices of Violation (NOVs). NOVs are streamlined administrative civil penalties where a pre-determined monetary penalty is appropriate. They may often be the most efficient and effective way to compel compliance, because they can be issued in the field directly to the responsible party.

The Notice of Violation User's Guide (COMDTINST M5582.1 series) and CG-INV Policy Letter 1-17 include violations of applicable BWM regulations for which an NOV may be issued. Documentation of such action must be completed in the associated MISLE Enforcement Activity. As a reminder, if an NOV is issued to a foreign party, a Letter of Undertaking (LOU) must be requested to ensure payment of a civil penalty if the NOV is declined.

- e. Class I Civil Administrative Penalty. This enforcement action is adjudicated by a Coast Guard Hearing Officer. Entities that violate the mandatory BWM requirements may be subject to civil penalties, as updated annually for inflation within 33 CFR 27.3, with each day of a continuing violation considered a separate violation, and vessels operated in violation of these regulations are liable *in rem* for any civil penalty assessed.

A civil penalty action typically will not be initiated for first-time reporting and record keeping violations, as these types of violations are most often handled with an LOW or NOV. If a vessel makes a return visit, arriving or departing with similar deficiencies, the case should be referred to a qualified Coast Guard Investigating

Officer, and the cognizant COTP or OCMI should consider initiating civil penalty proceedings. If the cognizant COTP or OCMI determines there is evidence of a violation of these requirements, a Class I Administrative Civil Penalty may be the most appropriate enforcement action. Documentation of such action must be completed in the associated MISLE Enforcement Activity.

- f. Suspension and Revocation (S&R). An S&R proceeding is the presentation to an Administrative Law Judge of all relevant evidence and facts surrounding a specific offense committed by a mariner who holds a Coast Guard issued merchant mariner credential or is acting under the authority of one. After all evidence has been collected and all witnesses have been interviewed, the OCMI, Coast Guard District Office, or Coast Guard Headquarters acting in accordance with 46 CFR part 5, may decide to initiate S&R proceedings. S&R complaints issued under 46 CFR 5.33 for violations of the BWM requirements must contain the specific regulation or statutory title and section number. Documentation of the S&R action must be completed in the associated MISLE Enforcement Activity.

- g. Revocation of Clearance and Customs Holds. When a vessel owner or operator is in violation of the BWM requirements of either 33 CFR 151 subpart C or D, the COTP may request that the District Director of Customs withhold or revoke the clearance required by 46 U.S.C. 60105. See 33 CFR §151.1508 and 16 U.S.C. 4711(g)(3). COTPs are reminded to contact their respective District legal office regarding LOU or surety bond process before granting clearance to any vessel that had its clearance revoked or withheld under this statute.

- h. Criminal Proceedings. A person who knowingly violates the mandatory BWM regulations may be guilty of a Class C Felony and be subject to criminal proceedings. Cases falling into this category are expected to be rare and typically involve severe violations. When a case rises to this level, units should consult their District legal offices and refer to Chapters 3 and 11 of the Maritime Law Enforcement Manual, COMDTINST M16247.1 series, for further guidance.

Appendix A to Enclosure (1)

Sample Letters of Warning

U.S. Department of
Homeland Security

**United States
Coast Guard**



Commander
United States Coast Guard

1 Yerba Buena Rd
San Francisco, CA 94130
Phone: (415) 399-3547
Fax: (415) 399-3521
Email:

Month DD, 20XX

Delivered Certified Mail Return Receipt Requested

Owner, Operator or Vessel Representative
Mailing Address

Subject: WARNING IN LIEU OF CIVIL PENALTY

Dear Sir or Madam:

Coast Guard personnel from my office visited your vessel on INSERT DATE, and discovered the following violation:

Violation Cite: INSERT CITATION (e.g., 33 CFR §151.2070(a))

To wit: While serving as master on board the M/V INSERT VESSEL NAME on INSERT DATE, your required INSERT VIOLATION DESCRIPTION (e.g., ballast water records were missing the following information: dates, locations, and volumes of ballast water discharged into the waters of the United States during your previous voyage).

It was determined that justice will be best served by issuing you a warning rather than pursuing a monetary penalty for your conduct as set forth above. You are advised that this warning will become a matter of Coast Guard record and will be considered for any future enforcement actions against you. You may accept or decline this warning. Indicate your choice below, sign and date, and return a copy to the address above within 30 days of your receipt. Failure to return a signed copy will result in the Coast Guard considering this warning accepted. Should you choose to decline this warning, civil penalty proceedings will be initiated against you in accordance with 33 CFR 1.07. You may contact me at the number above with any questions.

Sincerely,

J. A. SMITH
Rank, U.S. Coast Guard
Position
By direction

I hereby accept/decline the above-mentioned warning.

Name

Date

Appendix A to Enclosure (1) to NAVIGATION AND VESSEL INSPECTION CIRCULAR
01-18

U.S. Department of
Homeland Security

**United States
Coast Guard**



Commander
United States Coast Guard

1 Yerba Buena Rd
San Francisco, CA 94130
Phone: (415) 399-3547
Fax: (415) 399-3521
Email:

Month DD, 20XX

Delivered Certified Mail Return Receipt Requested

Owner, Operator or Vessel Representative
Mailing Address

Subject: WARNING IN LIEU OF SUSPENSION AND REVOCATION PROCEEDINGS

Dear Sir or Madam:

An investigation has revealed the following conduct on your part while serving aboard the M/V INSERT VESSEL NAME, O.N. INSERT OFFICIAL NUMBER under the authority of Merchant Mariner's Document No. INSERT MMC#:

Complaint: Violation of a Law or Regulation (46 CFR §5.33)

Violation Cite: INSERT STATUTORY/REGULATORY CITATION (e.g., 33 CFR §151.2060(b))

To wit: While serving as master aboard said vessel on INSERT DATE, you failed to INSERT VIOLATION DESCRIPTION (e.g., submit the required ballast water reporting information to the National Ballast Information Clearinghouse (either no later than 6 hours after arrival at the port of destination or prior to departure from that port or destination)).

It was determined that justice will be best served by a issuing a warning rather than conducting a formal proceeding against you for your conduct as set forth above. You are advised that if you accept this warning it will become a part of your merchant mariner's record and will be considered during any future enforcement actions and credentialing transactions involving you. You may accept or decline this warning. Indicate your choice below, sign and date, and return a copy to the address above within 30 days of your receipt. Failure to return a signed copy will result in the Coast Guard considering this warning accepted. Should you chose to decline this warning, suspension and revocation proceedings will be initiated against your Merchant Mariner's License in accordance with Title 46, United States Code, Chapter 77. You may contact me at the number above with questions.

Sincerely,

J. A. SMITH
Rank, U.S. Coast Guard
Position
By direction

I hereby accept/decline the above-mentioned warning.

Name

Date

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LIST OF ACRONYMS

AMS	Alternate Management System
ANS	Aquatic Nuisance Species
BO	Coast Guard Boarding Officer
BW	Ballast Water
BWDS	Ballast Water Discharge Standard
BWE	Ballast Water Exchange
BMWP	Ballast Water Management Plan
BWM	Ballast Water Management
BWMS	Ballast Water Management System
CFR	Code of Federal Regulations
COTP	Coast Guard Captain of the Port
EEZ	Exclusive Economic Zone
EPA	Environmental Protection Agency
CG-5P	Assistant Commandant for Prevention Policy
CG-CVC	Coast Guard Office of Commercial Vessel Compliance
CG-OES	Coast Guard Office of Operating and Environmental Standards
CG-OES-3	Coast Guard Environmental Standards Division
GRT	Gross Register Tons
GT	Gross Tons
IMO	International Maritime Organization
IO	Coast Guard Investigating Officer
LOU	Letter of Undertaking
LOW	Letter of Warning
MISLE	Marine Information for Safety and Law Enforcement
NANPCA	Non-indigenous Aquatic Nuisance Prevention and Control Act of 1990
NBIC	National Ballast Information Clearinghouse
NISA	National Invasive Species Act of 1996
NM	Nautical Mile
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System
OCMI	Coast Guard Officer in Charge, Marine Inspection
OMSM	Operations, Maintenance, and Safety Manual
PSCO	Coast Guard Port State Control Officer
PQS	Personnel Qualification Standard
PWS	Public Water System
S&R	Suspension and Revocation
STEP	Shipboard Technology Evaluation Program
U.S.C.	United States Code
UWILD	Underwater Survey in Lieu of Dry-docking
USCG	U.S. Coast Guard

LIST OF COAST GUARD WEBSITES AND EMAILS

Website Name	Link
Coast Guard Maritime Commons	http://mariners.coastguard.dodlive.mil/
Marine Safety Information Bulletins (MSIB)	http://www.dco.uscg.mil/Featured-Content/Mariners/Marine-Safety-Information-Bulletins-MSIB/
NVIC Home	http://www.dco.uscg.mil/Our-Organization/NVIC/
Homeport – Port Directory	https://homeport.uscg.mil/
Office of Commercial Vessel Compliance (CG-CVC)	http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/
Environmental and Standards Division (CG-OES-3)	http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/office-oes/Environmental-Standards-Division-Copy/
Marine Safety Center BWMS Switchboard	http://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Marine-Safety-Center-MSC/Ballast-Water/
USCG Maritime Information Exchange -Approved Equipment List (CGMIX)	https://cgmix.uscg.mil/Equipment/EquipmentSearch.aspx
National Ballast Information Clearinghouse (NBIC)	http://invasions.si.edu/nbic/

Office Name	Email Address
CG-CVC	CGCVC@uscg.mil
CG-OES	environmental_standards@uscg.mil