

SUB-COMMITTEE ON BULK LIQUIDS AND
GASES
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ADDITIONAL GUIDELINES FOR IMPLEMENTATION OF THE BWM CONVENTION

Implementation of PSC in absence of agreed IMO sampling guidelines

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SUMMARY

Executive summary: This document suggests sampling exercises should not be undertaken before IMO concludes robust, transparent and simple PSC sampling guidelines

Strategic direction: 2.0

High-level action: 2.0.1

Planned output: 2.0.1.8

Action to be taken: Paragraph 18

Related documents: BLG 16/4, BLG 16/WP.4; FSI 19/6; MEPC 64/2/15, MEPC 64/23 and MEPC 64/WP.8

Introduction

1 Following the adoption of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (BWM Convention), the IMO has prepared a number of guidelines intending to assist implementation of the BWM Convention. However, countries which have not ratified the Convention noted at various occasions that barriers to ratification still exist despite the comprehensive guidelines already issued. It is clear that, amongst these Guidelines, the so-called "PSC sampling guidelines" is deemed as one of the most important by many States and industry groups, mainly due to the unique mechanism on the port State control (PSC) contained in article 9 of the BWM Convention.

2 The common practice under *conventional* maritime Conventions, such as the SOLAS Convention or the MARPOL Convention, which were adopted by IMO, is that a port State control officer, or a PSCO, should primarily engage in the first instance in documentation verification, rather than initiate sampling exercises. It is understood that the rationale behind this is that it would be very difficult, if not impossible, to finalize the sampling exercise during the limited time during the PSC, as described later in this document.

3 Another rationale for not exercising the sampling on board in the various IMO Conventions would be that there is a common understanding that a system or equipment which was type approved by the Administrations prior to taking it on board should be, if properly operated and maintained, regarded as operationally compliant without failing to meet the technical standards contained in these Conventions. PSCOs are not obliged or expected to carry out the sampling and analysis of discharge on board – for example with machinery space oil filter equipment (Oily Water Separator).

4 In contrast, the BWM Convention allows the PSCOs to take a sampling exercise on board, although a ballast water management system was type approved beforehand and even where there is onboard documentary evidence to describe correct operation and maintenance. It is quite natural, given this PSC implementation framework, for the PSC sampling guidelines' importance to be increased, and the IMO requires development of robust and transparent Guidelines to this end. Also, it is expected that the Guidelines should not contain a sampling method which would cause a wide range of results. Rather, a simple and reliable sampling method is necessary in the Guidelines concerned, given the different capacities and capabilities by individual PSCOs in the different parts of the world. Regrettably, despite intensive discussions at BLG 16, the Sub-Committee was not able to finalize the draft guidelines on ballast water sampling and analysis despite scientific advice that the draft represented the current "state of knowledge".

5 While it is anticipated that further efforts will be made to finalize the PSC sampling Guidelines prior to the BWM Convention's entry into force, it is becoming likely that the Guidelines would not be ready in time for the entry into force. Therefore, the co-sponsors consider that it would be worthwhile to start considerations on pragmatic approaches, if any, to the sampling exercise during the PSC, in order to prevent possible confusions, including unexpected detentions, delays, or legal disputes which might occur as the result of the sampling and analysis.

Discussions

Germany's proposal at MEPC 64

6 With regard to the PSC sampling, at MEPC 64, Germany put its proposal (MEPC 64/2/15) where it suggests that, in the absence of an agreed sampling guideline, port States would exercise the discretion given to them under the BWM Convention in a manner that refrains from initiating criminal prosecution under article 8 of the BWM Convention based on sampling results alone (paragraph 6.1).

7 Also the document contains a proposal that the control and monitoring of BWMS, on the basis of Guidelines (G8), should be standardized and the analysis result of sampling should be collected to the modification of Guidelines (G2) and to develop a sampling and analysing system (paragraphs 7, 8.1 and 8.2).

8 On Germany's proposals above, the co-sponsors could in a broader manner support the view which is contained in paragraph 6.1 of its document.

9 Nevertheless, concern should be expressed as the proposal (paragraph 10) allows that the port States still might have opportunities to exercise sampling discretion based on its own procedure using different sampling ways prior to the finalization of the IMO sampling guidelines. More in particular, in Germany's proposal, it is understood that collected sampling data would be analysed and evaluated with the aim to developing sampling guidelines, including modification to the Guidelines (G2), (G8) and (G11). However, in the absence of the

agreed uniform sampling guidelines, it is most likely that the sampling results made by different methods would inevitably indicate variable figures.

10 In addition, PSC is absolutely exercise of public authority so that port States should be mindful to exercise their rights; therefore, the co-sponsors consider that PSC is not an appropriate means for collecting sampling data intended to be used during improvement or finalization of IMO Guidelines, which is completely out of the purpose of the PSC. The co-sponsors propose that flag States on their own could collect the sampling data, if required, to contribute to the development of relevant guidelines.

11 Moreover, the following points should be taken into account when concluding that PSC is not the appropriate mechanism for collecting sampling data:

- .1 PSCOs check many points in relation to safety and marine pollution prevention regulations of relevant international conventions within a short time, usually within a few hours, so that it is difficult to spend additional time for sampling. It would also be difficult for PSCOs to explain to shipmasters that the activity is not for the genuine purpose of PSC;
- .2 there is little experience of sampling procedures for PSCOs and detailed expertise and knowledge is absent in the current situation where no standardized sampling guidelines exist; and
- .3 there is significant cost associated with obtaining sampling kits for PSCOs worldwide, which are not for the genuine PSC activity but for other purposes.

12 The co-sponsors believe that it would be inappropriate to rely upon wide ranges of sampling and analysis data outcomes during development of relevant guidelines; hence these sampling exercises at PSC would just result in another burden for shipping operations and PSC activities.

PSC procedure in the absence of the agreed sampling guidelines

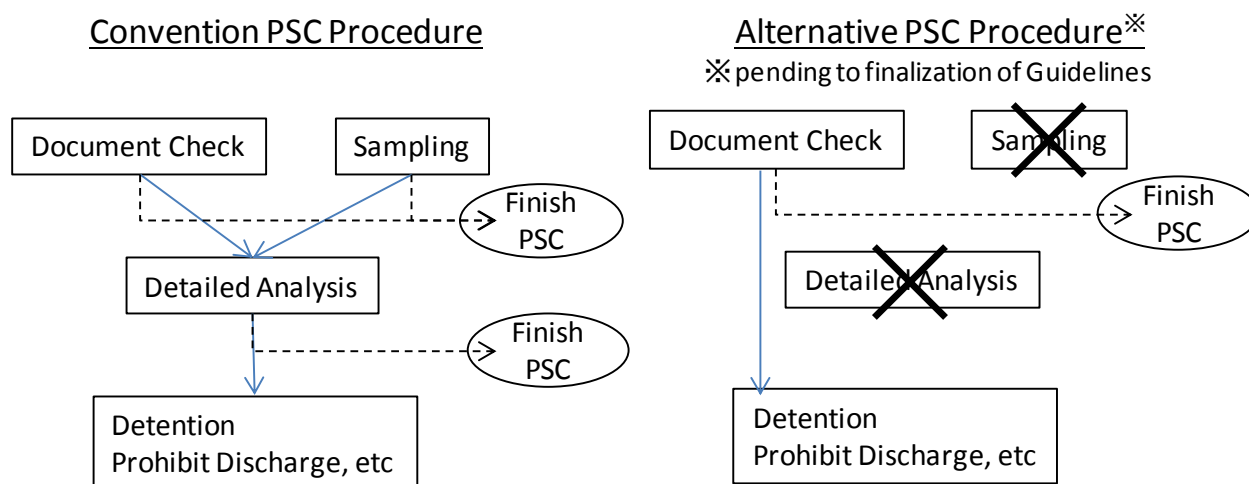
13 Again, it should be noted that the BWM Convention text (article 9.1) contains the unique feature where the sampling exercise could be allowed in the first instance of the PSC procedure.

14 On the other hand, according to the PSC guidance discussed in the BLG Sub-Committee (BLG 16/4 and BLG 16/WP.4) and the FSI Sub-Committee (FSI 19/6), it would be preferable for port States to exercise documentation checks at the first step in their PSC procedure for even the BWM Convention. It is understood that this document check would include that for the Ballast Water Management Plan (BWMP), Type Approval Certificate and Ballast Water Record Book (BWRB). It also should be emphasized that approved Ballast Water Management Systems (BWMS) on board have been appropriately approved by IMO directly (Procedure (G9)) and global procedures of the BWM Convention (Guidelines (G8)). The co-sponsors are certainly confident that it is a proportionate approach for PSCOs to judge whether the ship operates its BWMS in a proper manner, through checking these documents only at the initial stage of the port State control inspection.

15 However, in accordance with the procedures currently under discussion at BLG and/or FSI Sub-Committee, the co-sponsors are concerned that, if in absence of the agreed PSC sampling guidelines, it is likely that PSCOs might exercise the sampling at a later stage

of the PSC procedure without any clear grounds for non-compliance. Given a potential negative impact which might cause inappropriate detentions based on sampling results made by a non-standardized sampling method, it is strongly suggested that, during the period after the entry into force of the BWM Convention but prior to the finalization of PSC sampling guidelines, sampling activity should not be exercised during PSC. If the Sub-Committee so prefers, this suggestion could be taken forward to the MEPC for development of a possible resolution (or whichever appropriate form of documentation) certainly before the entry into force of the BWM Convention.

16 Having noted these, the co-sponsors would like to reaffirm their position not to intend to prolong the discussion on the sampling guidelines, but rather to intensify their efforts, with other States and industry groups to conclude robust, transparent and simple PSC sampling guidelines at the earliest convenience. In the interim period an alternative PSC procedure is proposed in order to remove a significant barrier to the ratification and the entry into force of the BWM Convention at the earliest opportunity.



Conclusion and proposal

17 In conclusion, the co-sponsors are of the view that port States should not exercise their sampling until standardized and internationally agreed IMO PSC sampling and analysis guidelines are issued. The co-sponsors argue that, traditional PSC implementation, which is to assess whether an installed BWMS is properly operated by checking relevant documents, is completely sufficient to facilitate ratification and effective implementation of the BWM Convention until finalization of the sampling guidelines. With this understanding in mind, it is ensured that the port State controls could prevent inappropriate and unjustified detentions, which are based on non-standard sampling results. It is suggested that, if the Sub-Committee agrees to this proposal, this view should be forwarded to the MEPC for formal decision on this issue.

Action requested of the Sub-Committee

18 The Sub-Committee is invited to consider the proposal and decide as appropriate.