

Ballast Water Rulemaking Advisory Committee

Meeting Minutes

Ballast Water 2016

Wednesday, Dec. 2, 2015

10-12:30 p.m.

DEQ Headquarters

(Check-in on 10th floor)

811 SW 6th Avenue

Portland, OR 97204



State of Oregon
Department of
Environmental
Quality

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Committee Members participating (in attendance or via conference call):

Mark Sytsma (PSU)	Jas Adams (Willamette Univ)
Ross McDonald (Sause Bros)	Amanda Hanson (LCREP)
Kate Mickelson (CRSOA)	Dick Vanderschaaf (TNC)
Rick Boatner (ODFW)	Nicole Dobroski (CSLC)
Robyn Draheim (USFWS)	Michael Pearson (USCG)
Allen Pleus (WDFW)	Marla Harrison (Alt: Port of Portland)

Others present:

Stephen Phillips (Pacific States Marine Fisheries Comm.)

DEQ staff present:

Rian Hooff

List of Meeting Materials:

- Oregon DEQ presentation slide deck
- Audio Recording

Meeting Commenced: 10:00 AM

1. Screening of video clip "How clean is clean enough" regarding ballast water treatment system technology development, challenges and efficacy testing. Produced by NE/Midwest Institute (10:42 - <https://vimeo.com/142504578>)
2. Welcome, Overview and Introductions:
DEQ welcomed advisory committee members and reviewed the objectives of the committee and this meeting. The Committee was formed as a continuation of the Task Force on Shipping Transport of Aquatic Invasive Species for the purpose of providing input on both technical and policy issues for rules developed in response to HB 2207.
This meeting aims to focus on background rationale for developing new rules in response to changes in federal ballast water management regulations. Comments from this meeting will be used in developing a draft rule proposal for discussion at the next advisory committee meeting.

DEQ anticipates the need for 2-3 advisory committee meetings before developing a draft rule for public comment by approximately April 2016. Following a public hearing, comment period, and revisions, DEQ aims to present the final rule to the Environmental Quality Commission for consideration and adoption in August 2016.

Advisory committee input and discussion will be used to consider alternatives, weigh options and make potentials to draft proposed rules. Although consensus is desirable, DEQ is not requiring it for development of these rules.



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3. Updates on ballast management developments in other jurisdictions:
The IMO Ballast Water Management Convention (2004) continues to inch towards full ratification and may reach the threshold for implementation by the end of 2016. The Convention will enter into force one year after 35% of world gross tonnage is represented by the list of ratifying countries. Less than 2% remains and multiple additional countries are poised to ratify in the near future. The Convention will establish a timeline for which the global fleet will be required to meet D-2 performance discharge standards.

The US 2nd Circuit Court of Appeals has recently determined that the EPA acted arbitrarily and capriciously by failing to justify that IMO D-2 discharge standards are adequate for protecting navigable waters from AIS threats. The ruling will require EPA to reconsider some aspects of the 2013 Vessel General Permit, or provide more detailed analyses to justify their conclusions. Because the ruling did not establish a required timeline, it is anticipated that EPA will address these issues in the development and reissuance of the Vessel General Permit for 2018. Jas Adams provided some additional comment/insight noting that the ruling explicitly stated that 'corrective action is not an effective remedy' for responding to AIS threats.

The US Coast Guard issued a new final rule for ballast management requirements under 33 CFR 151. The rule amends reporting requirement timelines such that vessel are directed to submit reports after completing operations rather than 24 hours prior to entering the port. These changes create an inconsistency between federal reporting requirements and reporting procedures required by west coast states of CA, WA and Oregon.

California State Lands Commission is funding a study to assess feasibility of shore based treatment systems. AB 1312, passed in November, delays implementation of California's ballast discharge performance standards until January 2020 (Nicole Dobroski, CSLC).

Washington will be reconvening its Ballast Water Work Group (BWWG) beginning in mid December for a series of meetings on various technical, policy and program funding issues (Allen Pleus, WDFW). The BWWG may also provide guidance regarding WDFW rulemaking plans/activities that could be related to Oregon rulemaking proposals for vessels operating in the Columbia River.

Recent discussions with Chris Wiley – Transport Canada – suggest that Canada is moving forward with plans to implement the IMO Convention including more stringent requirements for ballast exchange plus treatment for vessels operating in freshwater ports.



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4. Update on Oregon ballast water management activities (DEQ):
2015 Legislature passed two bills related to Oregon ballast management: a fee increase (SB 161) and a clarification of EQC rulemaking authority (HB 2207). The part time ballast water inspector position has been vacant since July. DEQ is attempting to combine this part-time position with another part-time position so that we have greater potential for personnel retention. DEQ is closely monitoring pending proposals for increased terminal activity at coastal ports (e.g. LNG) that could result in significant increases in ballast discharge to state waters. Marla Harrison inquired about mechanisms for DEQ to obtain additional funding through the facility proposal/permitting process that could be used to enhance DEQ ballast water compliance verification and inspection capacity. Dick Vanderschaaf voiced concern about whether the current vessel arrival fee was adequate to provide inspection presence at ports located along the coast.
5. Background and Rationale for proposed rulemaking (DEQ):
The primary objective for amending OAR 340-143 is to maintain or improve adequate prevention strategies to protect Oregon waterways from AIS introductions from shipping operations. Recommendations from the 2014 Task Force report and the outcome of HB 2207 remain as key motivators to amend rules. One of guiding principles for DEQ is to find a solution that does not involve establishing a state specific discharge standard that could contribute to inconsistencies with federal standards or result in incompatibilities with other west coast jurisdictions. Rather, the department has been focused on crafting policies that target high risk ballast management practices and/or vessel arrivals with specific management practices that are compatible with any shipboard treatment systems that are being used to meet federal/international discharge standards.

DEQ and the Task Force have identified two primary areas of concern. The first concerns vessels that want to be able to ballast and subsequently de-ballast from ballast tanks that were 'empty' upon entering state waters. "Empty" tanks contain residual ballast water and sediments that can pose a significant AIS threat if not properly managed. Based on unanimous support from the 2014 Task Force, DEQ plans to propose a 'salt-water flushing' requirement that mirrors federal regulations already established under the 2013 EPA Vessel General Permit. This 'no ballast on board' (or 'NOBOB') rule will require amending OAR 340-143-0010 and is explicitly authorized under ORS 783.635.

Secondly - to address implementation of federal ballast discharge standards that are less stringent than desired for protecting state waters - DEQ continues to be interested in adopting a 'ballast exchange plus treatment' strategy for vessels that represent a high-risk for transferring AIS to low-salinity harbors. This strategy, which is required for vessels

operating in the Great Lakes, recognizes that replacing mid-ocean ballast exchange with the implementation of IMO D-2 discharge standards may not represent an adequate level of risk-reduction for low salinity ports. This is primarily because mid-ocean ballast exchange can be a highly effective management strategy establishing a mismatch between source environments and receiving environments. Maintaining this proven strategy during a transition to new (and largely unproven) reliance on shipboard treatment systems is regarded as a prudent and necessary precautionary measure. Although adopting an exchange plus treatment provisions into OAR 340-143-0050 is the current preferred option, DEQ encourages suggestions for alternative strategies.

If DEQ opts for the 'exchange plus treatment' strategy, one of the key decisions will be to determine the criteria for which vessels/voyages are subject to the requirement. The 2014 Task Force primarily settled on the notion of adopting similar criteria language that the EPA has already implemented under the 2013 Vessel General Permit (VGP) for vessels conducting operations in the Great Lakes. Section 2.2.3.7 of the VGP requires mid-ocean exchange – in addition to using a shipboard treatment system – if the vessel has taken on ballast water that has a salinity of less than 18 parts per thousand from a coastal, estuarine, or freshwater ecosystem within the previous month. Some have argued, however, that this requirement may create confusion or difficulties for vessel operators to determine the specific environmental conditions during their time of ballasting. In contrast to this approach, the states of Maine, New York and Rhode Island opted to certify the VGP for their state waters with the condition that any vessel whose voyage originates outside the EEZ must conduct mid-ocean ballast exchange - in addition to meeting treatment discharge standards – regardless of original ballast source or discharge location environmental characteristics. Furthermore, Transport Canada aims to adopt an 'exchange plus treatment' strategy that be required of any vessel discharging to a freshwater port. Since these Canadian regulations will also affect freshwater ports on the West Coast (e.g. Fraser River), DEQ seeks input from advisory committee members on whether it is more important that our rules maintain consistency with federal language as it applies to the Great Lakes, or to strive towards a policy that would enable consistency amongst west coast ports.

In addition to the two primary topics mentioned above, DEQ encourages suggestions regarding other areas of ballast management or language revisions to OAR 340-143 that may be warranted at this time.



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6. Roundtable Q&A (all)

Marla Harrison (Port of Portland) requested that DEQ provide additional detailed evaluation of AIS ballast-mediated risks to Oregon waters. Specifically, she suggested that having clearer communication about prioritization of vessel or voyage type risks that could be of greater risk for introducing AIS to Oregon waterways. This type of information would help in determining whether the level of effort proposed is commensurate with the level of risk to the environment.

Jas Adams commented that the level of risk to the Columbia River system would be difficult to overstate. For example, the estimated costs if quagga or zebra mussels become established – both direct and indirect would be incredibly catastrophic and damaging to a wide breadth of stakeholders and user-groups.

Mark Sytsma (PSU) noted the importance of the exchange plus treatment concept as it applies to vessel movements between freshwater ports of the west coast – namely Columbia River, Sacramento River, and Fraser River. He asked whether CSLC is considering a comparable policy strategy. Nicole Dobroskis (CSLC) responded yes, that recent legislation changes including the further delay of BWDS implementation timelines has further opened up the possibility that CA could adopt a similar strategy. The question was also posed to WDFW regarding Columbia River traffic and Allen Pleus noted the willingness and interest by WDFW to pursue a comparable strategy to what Oregon DEQ is proposing.

Mark further commented that for the sake of west coast consistency and to avoid a patchwork of regulations, it would make sense to take a similar approach to BWE+BWT as Canada (i.e. require exchange for all vessels discharging to low-salinity ports). Dick VanderSchaaf (TNC) concurred, suggesting that it would avoid the challenges and likely problems that would be involved with vessel operators needing to closely monitor ambient surrounding salinities throughout ballasting uptake operations and the further complication of how variable surface salinity may not be an accurate representation of salinity at depth of intake.

7. Discussion of Next Steps

The group discussion further supported a request that DEQ prepare a strawman draft of proposed rule language for distribution in advance of our next meeting.

Meeting Adjourned at 12:15

Next meeting scheduled Wednesday January 27, 1000-1230



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