



CHAMBER OF SHIPPING OF AMERICA

MONTHLY REPORT

AUGUST 2018

- **CSA attended USCG Philadelphia briefing on MARPOL Annex VI Enforcement.**
- **CSA met with State Department to discuss maritime issues.**
- **Give CSA a follow on**  [@CSAKnowships](https://twitter.com/CSAKnowships)

NOTE TO THE READER: Reference to the Federal Register may be found at <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>. Please note new address and format for Federal Register retrieval due to upgrade in US government website.

References to legislation may be found at <http://thomas.loc.gov/> by entering the bill number (HR 802, S 2841) in the "search bill text" block found at the center of the page.

EPA Study on the Impacts of Compliance with the ECA Fuel Sulfur Limits on US Coastal Shipping

CSA attended the recent EPA Workshop for a Study on the Impacts of Compliance with the ECA Fuel Sulfur Limits on US coastal shipping. This study is being initiated by EPA as a result of a mandate from Congress which asks EPA to evaluate costs (associated with the ECA fuel requirements) and whether modal shifts could occur. A similar study was conducted for the Great Lakes several years ago. Congress also asked EPA to consider exempting vessels with engines below 32,000 horsepower that operate more than 50 miles from shore which represent approximately 85% of the vessels operating in the North American ECA if the study determines that a modal shift could occur. Obviously a shift from the far more efficient and environmentally friendly shipping mode to a less efficient and less environmentally friendly land based mode (rail/truck) is not in the best interests of the maritime industry or the environment.

During the workshop, EPA made very clear that this initiative is not about revisiting or reconsidering the North American ECA although questions/comments from the participants suggested that if modal shifts are identified, EPA would be forced to reconsider the current ECA requirements and how they could be restructured to prevent a modal shift to land based transportation modes.



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EPA NEEDS INDUSTRY INPUT TO SUCCESSFULLY COMPLETE THIS STUDY.

The first step in collecting data for this study is to identify origin/destination (O/D) pairs which the industry believes are "at risk" for a modal shift. At this point in time, EPA is looking for O/D pairs where cargo originates from a port located in the US, Canada, Mexico or Central America and is delivered to a US port located on the Pacific, Atlantic, or Gulf of Mexico. Once identified, the contractor conducting the study will research freight/charter rates for these routes and eventually end up with a cost comparison for the shipping routes versus rail/truck modes.

Because of the sensitive nature of this information request particular as it relates to anti-trust/fair competition laws, EPA urges companies submitting this information to clearly mark this information as "confidential business information" where appropriate. Also because of these sensitivities, CSA will NOT be collecting information from its members for a mass submission to EPA.

A link to the presentation made by EPA at the workshop can be found below. Also linked below is a follow-up email from EPA to the workshop participants and my notes from the meeting.

<https://www.epa.gov/sites/production/files/2018-08/documents/coastal-shipping-workshop-presentation-2018-07-30.pdf>

[Coastal Shipping Study - EPA Follow Up Request for Input](#)

[Coastal Shipping Study - KJM Notes on Workshop](#)

Applicability of the IMO Data Collection System (DCS), SEEMP Part II and Document of Compliance

Thanks to the focus of one of CSA's member companies, a nuance has been observed in the scope of the IMO requirements for participation in the data collection system (DCS), completion of SEEMP Part II and the Document of Compliance. The question is whether these provisions apply to vessels engaged solely in coastwise trade which are registered in the nation in which they are exclusively trading. After much research and discussion with the US Coast Guard, the answer for the US is NO. Please take into account that this response is based on the text within the relevant MARPOL regulations and



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does not prevent a flag state from applying these provisions to coastwise vessels flying their flag. What it does mean based on discussions with the USCG is that US flag vessels engaged exclusively in the coastwise trade do NOT have to comply with the reporting requirements of the DCS, do NOT have to complete the relevant portions of SEEMP Part II, nor do they need to carry a document of compliance (DOC). While the question here relates to applicability to US flag vessels engaged in US coastwise trade, these provisions could be applied by other flag states to their coastwise trading vessels and thus has potential implications in other IMO member states.

When vessel owners operating US flag vessels in US coastwise trade are considering whether they choose to voluntarily comply with these provisions, it must be recognized that if one of these vessels chooses to use a foreign shipyard, they must either comply with these provisions or request the exemption as provided for in MEPC.1 Circ.863, the latter being a far more preferable option PROVIDING the vessel will not be used other than for coastwise trading.

Vessels registered in other countries and engaged exclusively in coastwise trade in that country should consult their respective Administrations to assure this interpretation is correct for that jurisdiction. Particular care should be taken with regard to EU member states given the EU MRV program is not aligned with the IMO DCS program.

Key provisions relevant to this conclusion are as follows:

MARPOL Consolidated Edition 2017 Annex VI, Chapter 4 - Regulations on energy efficiency for ships, Regulation 19, Item 2.1 Application states that the provisions of this chapter shall not apply to ships solely engaged in voyages within waters subject to the sovereignty or jurisdiction of the State the flag of which the ship is entitled to fly. **Regulation 22 and 22A** that provide a detailed description of the SEEMP and DCS are part of Chapter 4 and so it appears that these provisions also do not apply to domestic operations.

MEPC.1 Circ. 863 - Recommendation on exemption of ships not normally engaged on international voyages from the requirements in Chapter 4 of MARPOL Annex VI states "A ship which is not normally engaged on international voyages but which, in exceptional circumstances, is required to undertake a single international voyage, may be exempted by the Administration from any of the requirements in chapter 4 of MARPOL Annex VI." This issue was raised with a scenario where a vessel engaged in domestic trading but had to go international to travel to/from a foreign shipyard and IMO agreed that such a situation should be covered by this exemption provision.



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Lloyds Register has put out a guidance document titled "Guidance on the EU MRV regulation and the IMO DCS for shipowners and operators" (attached) - On page 14 Section 3- The IMO DCS, Item 3.1.2 states "To whom does it apply? The regulation applies to ships of 5000 GT and above, with the exception of ships engaged on domestic voyages" It further goes on to state "In the case of a ship which is normally engaged on domestic voyages, but which in exceptional circumstances is required to undertake a single international voyage, an exemption from any of the requirements in Chapter 4 of MARPOL Annex VI maybe sought from the administration. Please see MEPC. 1/Circ.863 for guidance"

DNV guidance comparing the EU MRV to the IMO DCS defines applicability for IMO DCS as "Ships > 5000 GT Trading Globally".

Reinstatement of US Sanction against Iran

The US government has reinstated the sanctions against Iran which had been temporarily relaxed as a result of the Joint Comprehensive Plan of Action (JCPOA) which was agreed in January 2016. Reinstatement of these sanctions have far reaching consequences across multiple sectors, including financial markets, shipping and energy sectors. In the President's own words, these sanctions will be applied not only to entities directly dealing with public and private sector entities in Iran but also third parties who deal with both US and Iranian entities. In other words entities will have to choose between entities doing business with/in the US and those entities in or having commercial ties to Iran. It is difficult to determine how an entity doing business with/in the US can assess the customer base of third parties to determine if that third party has business dealings with one tied with transactions in or with Iran.

This issue becomes further complicated given a May 2018 EU measure e.g. a "blocking statute", which prohibits EU companies from complying with the US sanctions. In other words, European companies face an unwinnable situation where they must comply with either EU law or the US imposed sanctions on Iran.

It is an understatement to say that this is a complex situation with even more complex legal requirements both in the US and relative to the EU "blocking statute" which requires significant input from legal professionals with expertise in both the US sanctions program and the EU blocking statute. Despite some very hard language from the White House, it is difficult to imagine that this Administration is prepared to cease all trade with EU entities as a result of the US sanctions program. It is equally difficult to imagine that EU entities are prepared to do likewise.



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Several information links are provided below to assist in understanding the requirements of the US sanctions policy. The first link provided below is to the US Office of Foreign Asset Control (OFAC) (US Department of Treasury) web page which administers and enforces economic and trade sanctions against targeted countries. Various links are included on this site which provide access to relevant documents as well as a "contacts" link through which transactional analysis by OFAC can be requested prior to execution of a particular transaction.

Our advice in view of the uncertainties and policy "disconnects" between what the White House is stating publically and how OFAC is expected to implement these sanctions is to have all international transactions reviewed by legal counsel and a due diligence effort made to ensure future transactions do not run afoul of the US sanctions program. Where uncertainty exists, members are urged to contact the OFAC contacts number to request a pre-determination that a planned transaction will not violate the terms of the US sanctions program. Additional links below include a link to the FAQ document and three industry publication summaries that provide a high-altitude summary of the expected impacts of the US sanctions program re: Iran.

Link to US Office of Foreign Asset Control (OFAC):

<https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>

[OFAC Resource Center Webpage](#)

[OFAC - Iran Sanctions - FAQ Document](#)

[OFAC - Iran Sanctions - Journal of Commerce](#)

[OFAC - Iran Sanctions - SEATRADE summary](#)

[OFAC - Iran Sanctions - Maritime Exec Summary](#)

Maritime Safety Act of 2018

There is no significant update since last month's report. This Bill remains at the Senate Committee on Commerce, Science, and Transportation. We believe this Bill will move forward to law after some minor changes are made by the Senate Commerce Committee and additional legislation may be added to the Save Our Seas Act of 2018 before going back to the House for approval. Once



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the Bill is final with no additional changes CSA will send out an analysis to members.

CSA Meeting Schedule for 2018

** Please save these dates on your calendars. For more see the CSA website
<http://www.knowships.org/news.php> **

NOVEMBER 7: Policy/Operations Committee in Washington, DC

NOVEMBER 7: Annual Environmental Awards Dinner in Washington DC

NOVEMBER 8: Board of Directors in Washington, DC



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