

Legislative Update -- July 25, 2005

Senate Commerce Committee Passes the Ballast Water Management Act

I. Senate Commerce Committee Action

The Senate Commerce Committee unanimously approved the Inouye Stevens Ballast Water Management Act, on July 21, and reported the bill to the full Senate. Floor debate is not likely until September.

The bill, at this point, only applies to vessels built after January 1, 2009. Those vessels will have to treat their ballast water to the previously discussed treatment standards which are 100 times more stringent than those proposed in the IMO Treaty. The bill gives the Coast Guard authority to accelerate the implementation of the bill's treatment requirements if the Coast Guard certifies that treatment technology is available.

At this point, the bill does not require that vessels already in service be retrofitted, although this may change if Floor amendments are introduced when the legislation is taken up by the full Senate. Such language could also be added in the House version of the bill which is still being drafted.

The Senate bill does not explicitly authorize using TRO, or other indirect measurements, as a means of a ship demonstrating compliance with the bill's treatment requirements. Senate staff believe that this is implicit in the bill's current language. They did not want to insert specific requirements that this be done in the bill as they wanted to leave this to the Coast Guard's discretion. If this is what they intend, it is still essential that the authority to authorize indirect means of testing be spelled out in the bill. *Otherwise, some environmental group will sue the Coast Guard claiming, since the law did not expressly authorize indirect testing, that it is illegal and that microbe counts must be conducted every time a ship discharges ballast water.*

II. Legislative Strategy for the Remainder of this Session and 2006

A.

There are two objectives in the legislative strategy that John and I developed. First, winning passage of a ballast water bill and second persuading Congress to adopt the two critical amendments that are discussed above. *Without retrofitting, ships will be discharging untreated ballast water until 2050, which effectively kills the whole point of the legislation and of BP's efforts to present itself as the environmentally friendly oil company.*

Based on intensive discussions that I have had with Senator Allen (R-Virginia), a key member of the Commerce Committee, and with members of his staff (in addition to discussions that they have had with other Senate staffers, at my request) it is clear that Congressional approval of any amendment relating to retrofitting will only occur if BP, or the Ballast Water Working Group of which it is a part, publicly supports its adoption. I have received the identical feedback in discussions that I've had with the House Transportation and Infrastructure Committee (Rep. Don

Young R-Alaska) and its Subcommittee on Water Resources & Environment (Rep. John Duncan R-Tennessee).

The Senate Commerce Committee reported the bill out on July 15th but the Committee Report is still being written. The bill will not go onto the Senate Calendar until that Report is submitted. Therefore, it is almost certain that the bill will not be called up for debate until after the August recess. If we are able to obtain the necessary letters from BP supporting our amendments during the next few weeks, there will be sufficient time to circulate them and assemble a bi-partisan coalition to support both amendments.

Senator Allen and Senator Inouye (through his staff) have told us that while they agree with what we want to do on the retrofitting issue, they cannot move that amendment without clear support from the ship owners; hence the importance of the timely receipt of the BP Letter. If its going to take BP until October, or later, to write the letter, then we have to hope that the Senate does not take up the ballast water bill until 2006. Should Senator Frist decide to call it up immediately after it is placed on the Senate Calendar (his prerogative) *the bill could easily pass the same day*, without any amendments being offered, under a Unanimous Consent Agreement.

We do not expect that the House will act until 2006. However, if the Senate bill is sent over as a "done deal", there is always the possibility that the House Transportation Committee will accept the Senate bill as a substitute for whatever bill is presently being drafted as a substitute for NAISA. The bill could then be brought to the House Floor under a suspension of the rules. Under that procedure, no floor amendments are permitted; its a straight up or down vote on the bill as reported by the Transportation Committee.

Therefore, BP should not plan on having "all the time in the world" to draft the needed letters and make its views known to Congress, either directly or through John and myself. That time could suddenly, and with little warning, disappear.

B.

Feedback from both Senate and House staff have made it clear that receptivity to our proposals would significantly increase once the test results from the Prince William Sound is submitted to Congress. Having additional test data based on treating ballast water taken from a South American or Asian port would be doubly significant.

Rep. Duncan, one of the key players on this legislation has repeatedly stated his reluctance to pass ballast water legislation until Congress is assured that the required treatment technology is available to the shipping industry. The sooner Nutech is able to submit that test data to Congress , the faster this legislation will pass.¹

¹ It will also be helpful to give Congress, and the shipping industry, data demonstrating how little time the Prince William Sound was out of service for the installation of Nutech's equipment.