

USCG Considers Organism Viability Testing Methods to Achieve Type Approval of Ballast Water Management Systems

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On August 21, 2024, the U.S. Coast Guard (“USCG”) outlined its intent to prepare the “Viability Testing Method Consideration for Acceptance Programmatic Environmental Impact Statement (“PEIS”)” in the Federal Register (89 Fed. Reg. 67646), which will be used to evaluate, and potentially adopt, organism viability testing methods to demonstrate that ballast water discharges meet required performance standards. Comments were due on or before October 7, 2024.

Background

USCG Ballast Water Management. The USCG published a final rule addressing ballast water management, which became effective in June 2012. These regulations mandate ballast water management requirements, including type-approved ballast water management systems over a phased-in period. See 33 C.F.R. § 151. Currently, USCG type approval is granted for ballast water management systems (“BWMSs”) that meet live/dead regulatory standards and the U.S. Environmental Protection Agency’s (“EPA”) Environmental Technology Verification (“ETV”) Program. That approval process does not include the use of viability testing.

Vessel Incidental Discharge Act (“VIDA”). In December 2018, VIDA was signed into law to replace the 2013 Vessel General Permit and bring uniformity to the regulation of incidental discharges from U.S. and foreign-flag vessels. VIDA allows the USCG to consider the use of viability tests for the type approval of BWMSs as a way of testing compliance with ballast water discharge standards. Such a change broadens how compliance with ballast water discharge standards may be measured, as VIDA allows the possibility for a BWMS to count organisms that are alive, but non-viable, the same as dead organisms. EPA’s final rule setting performance standards under VIDA for ballast water was signed on September 20, 2024, but VIDA requires that the USCG consider viability as applied to its current ballast water standard, as well as EPA’s upcoming ballast water standard under VIDA.

The Intent of the Coast Guard

The USCG is accepting proposed viability testing methods and will prepare a draft PEIS that will

consider whether to accept one or more methods for use in type approval of BWMSs. Viability testing methods to be evaluated in the PEIS represent three stages of research and development:

1. Currently in use by USCG or IMO;
2. Suggested in the peer-reviewed literature as potentially suitable; or
3. Under active research and development, with early results suggesting potential utility.

Such methods will be evaluated using the best available science. Once the draft PEIS is complete, it will be made available for a 45-day public review and comment period.

Further details on the USCG's notice and viability testing submission request are located at [Consideration for Acceptance of One or More Viability Testing Methods for Type Approval of Ballast Water Management Systems](#).

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