MARINE SAFETY ADVISORY No. 11-17

To: Owners/Operators, Masters, Nautical Inspectors, Recognized Organizations

Subject: BULK CARRIERS INVOICED FOR ENTRY FEE - ZAMBALES ZONE, PHILIPPINES

Date: 28 March 2017

Present Situation:

The International Chamber of Shipping (ICS) has reported to its members that invoices have been received from the Provincial Government of Zambales, Philippines, seeking payment of a “Provincial Coastwatch Environmental Monitoring System User Fee” from managed vessels passing through the territorial waters of the Province of Zambales, Philippines.

Background:

In 2015 similar complaints were made to the International Association of Dry Cargo Shipowners (INTERCARGO), the International Association of Independent Tanker Owners (INTERTANKO), and other shipping organizations. It had been reported that companies with ships on innocent passage close to the Province of Zambales in the Philippines had received invoices for an environmental charge, though the ships concerned had made no port calls in the region. With assistance of the Filipino Shipowners’ Association, the issue was brought to the attention of Congressman Manalo, as United Nations Convention on the Law of the Sea (UNCLOS) Art 26.1 makes it clear that no charge can be levied on foreign ships by reason of their passage through territorial seas and that therefore the action was viewed as a contravention of international law.

Ultimately, the matter was added to the Congressional agenda where a debate took place resulting in the Philippines congress agreeing that the charges should not be applied. At the time, Shipowners were advised not to pay the invoices as the matter was being addressed.

Attachment and Suggested Action:

The attached letter from the Province of Zambales, Philippines, contains amended ordinance no. 2016-68, complete with fee table. However, the revised ordinance is under deliberation, as it has not fully addressed the legal issues and objections raised by the maritime industry as adopted and contained in the opinions of the Philippines Department of the Interior and Local Government (DILG), Maritime Industry Authority (MARINA), and Department of Justice (DOJ).

This MSA expires one (1) year after its issuance, unless otherwise noted, extended, superseded, or revoked.
Arguably, the imposition of the environmental fees under the revised ordinance violates the freedom of navigation under the UNCLOS, because fees are collected even if the Province of Zambales has not rendered “specific services” to the concerned vessels. The revised ordinance may also be challenged on the grounds that fees are collected even if there is no proof that the concerned vessels have caused any pollution to the territorial waters of the Province of Zambales.

The Filipino Shipowners’ Association (FSA), and other interested parties are anticipated to proceed with the filing of a case against the Province of Zambales within the next few weeks, which could bar the Province from attempting to collect on invoices. A separate inquiry requested by Congressman Manalo is expected to be delayed, as Congress is now in recess.

Shipowners are advised that the legality of the ordinance is under deliberation. Therefore, the Republic of the Marshall Islands (RMI) Maritime Administrator (the “Administrator”):

1. invites RMI-flagged vessels who may have received similar invoices to share them with the Administrator;

2. encourages the careful monitoring of any contact from Zambales when ships are passing through their territorial waters;

3. advises owners of RMI-flagged vessels that the Administrator is again taking up the issue of the revised ordinance’s validity with the appropriate government agencies. During this time, concerned parties may invoke the DILG, MARINA, and DOJ opinions to challenge the revised ordinance;

4. further advises ship owners/operators who receive any such billing statements to reply that the legality of the ordinance is being reviewed; and

5. strongly urges that any payment be deferred.
Dear Sir/Madam:

In the Initial implementation of the Provincial Environmental Coast Watch Monitoring Ordinance last June 8, 2015, several stakeholders within the maritime industry had raised various concerns from overlapping of functions and domain responsibilities towards the imposition of environmental fees.

Because of this, the Sanggunian Panlahawigan through the Committee on Environment amended some provisions of the ordinance to conform with the requirements of the law in the enactment of environment protections.

Thus, a series of public hearings was conducted which were attended by representatives of Department of Environment and Natural Resources (DENR), Philippine Coast Guard (PCG), Philippine Ports Authority (PPA) and the Del Rosario Law Firm representing the shipping companies/agents to iron out contentious issues on the ordinance.

We are pleased to inform you that after consideration of the proposal from different stakeholders, the amended ordinance bearing no. 2016-68 was approved and enacted limiting its scope to purely environmental monitoring and protection measures.

For your information and guidance.

Sincerely yours,

ATTY. SAMUEL D. ABLOLA
Board Member Zambales
Committee Chairman on
Environment and Natural Resources
ORDINANCE NO. 2016-68

AMENDED ORDINANCE FOR THE PROVINCIAL MARITIME ENVIRONMENTAL MONITORING AND PROTECTION SYSTEM (MEMPS) IN THE PROVINCE OF ZAMBALES

Authored by: Board Member SAMUEL D. ABOLOA and Board Member RENATO H. COLLADO

WHEREAS, series of committee hearings were held, attended by the representatives from the Philippine Navy, Philippine Coast Guard, Shipping Companies, Subic Bay Metropolitan Authority, Xanatos Ltd. and other stakeholders for the amendment of the Ordinance previously entitled: Ordinance For the Provincial Coast Watch Surveillance and Environment Monitoring System In the Province:

[Signature]

Ground Floor, Provincial Capitol, Iba, Zambales  Telephone No. (047) 811-7201
WHEREAS, after committee hearings and consultations with the government agencies concerned, the amended ordinance is hereby submitted to read as Amended Ordinance for the Provincial Maritime Environmental Monitoring and Protection System (MEMPS) in the Province of Zambales;

WHEREFORE, premises considered, ON JOINT MOTION of Hon. Samuel D. Ablola, Chairman of the Committee on Environmental Protection and Natural Resources Development and Hon. Renato H. Collado, Chairman of the Committee on Legal Matters, Review of Ordinances and Executive Orders, without objection from the members present, BE IT ENACTED, AS IT IS HEREBY ENACTED, BY THE SANGGUNIANG PANLALAWIGAN OF ZAMBALES IN A SESSION HEREIN ASSEMBLED, BY VIRTUE OF THE POWERS VESTED IN IT BY LAW, THAT:

ORDINANCE NO. 2016-68

AMENDED ORDINANCE FOR THE PROVINCIAL MARITIME ENVIRONMENTAL MONITORING AND PROTECTION SYSTEM (MEMPS) IN THE PROVINCE OF ZAMBALES

Chapter I

Section 1: Title - the Ordinance shall be known as "The installation of a provincial MEMPS for the territorial waters of the Province of Zambales".

Section 2: Purpose - to upgrade the monitoring capacity and facilities of the Province of Zambales over its territorial waters to international standards for national and local environmental protection and preservation, prevention of maritime pollution due to hydrocarbon emissions and dumping of toxic or polluting wastes and ballast discharge in the provincial waters and the maintenance and improvement of the maritime water environment of the Province.

Section 3: Coverage - the Ordinance shall cover all the ports and territorial waters of the Province of Zambales.

Section 4. Definition of Terms - As used in this Ordinance, the terms below shall have the meanings ascribed to them in this section. Any words or terms not defined shall be customary meanings, unless the context requires otherwise, and shall be interpreted in a manner consistent with the purpose and spirit of this Ordinance.

1. MEMPS - Maritime Environmental Monitoring and Protection System services are shore-based systems which range from the provision of simple information of safety related messages to ships, such as environmental aids to navigation, position of other traffic or meteorological hazard warnings, to extensive management of traffic within the provincial waterways for the purpose of environmental stewardship.

2. IALA - International Association of Marine Aids to Navigation and Lighthouse Authorities. It brings together representatives of the aids to navigation services of more than 80 member countries for technical coordination, information sharing, and coordination of improvements to visual aids to navigation throughout the world.
3. MARINA - Maritime Industry Authority. It is a government agency created to integrate the development, promotion and regulation of the maritime industry in the country.

4. NAMRIA - The National Mapping and Resource Information Authority (NAMRIA) of the Philippines. It surveys and maps the land and water resources of the Philippines.

5. PROVINCIAL TERRITORIAL WATERS - is a belt of coastal waters extending from 15 km to 100 km from the baseline (usually the mean low-watermark) of a coastal state.

6. POLLUTER PAYS PRINCIPLE - the principle that a user of a service or resource pays directly for the environmental impact of their voyage, enjoining than the cost being shared by all the users or a community equally. In this case, it applies to ships using the MFMS services for their operations.

7. IMO - International Maritime Organization, a specialized agency of the United Nations that is responsible for measures to improve the safety and security of international shipping and to prevent marine pollution from ships.


9. AIR POLLUTION - means any alteration of the physical, chemical and biological properties of the atmospheric air, or any discharge thereto of any liquid, gaseous or solid substances that will or is likely to create or to render the air resources of the country harmful, detrimental, or injurious to public health, safety or welfare or which will adversely affect their utilization for domestic, commercial, industrial, agricultural, recreational, or other legitimate purposes.

10. PROVINCIAL WATERS - shall refer to jurisdictional waters of the Province of Zambales.

11. EMISSION - means any release of substance, subject to control from ships into the atmosphere or sea.

12. SHIP - means a vessel of any type whatsoever operating in the maritime environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms.

13. SHIPOWNER - means any person or company who owns, leases, controls, or operates a vessel.

14. SHIP REGISTRATION - the process by which a ship is documented and given nationality of the country that the ship has been documented to. For purposes of this Ordinance, Ships with local registry are those registered in the Philippines. Ships with international registry are those registered in other countries.
Chapter II

Section 5: Acquisition and Installation of the Maritime Environmental Monitoring System

The Province of Zambales hereby approves the acquisition, and installation of the Maritime Environmental Monitoring System at no cost and capital to the Provincial Government.

Section 6: Cooperation from Government Agencies

Government agencies and instrumentalities are requested to cooperate in the speedy and timely approval of the requisite permits and licenses for the installation and operation of said environmental monitoring system, if any.

Section 7: Implementation and Commissioning of the Provincial Maritime Environmental Monitoring System

Under this ordinance, a highly technical company shall be commissioned thru a memorandum of agreement to undertake and ensure the full implementation of the project under such terms of this Ordinance and said MOA such as, but not limited to:

1. Establishment of all monitoring sites in different strategic parts of the province;
2. Ensure the efficient operation and maintenance of the system;
3. Prepare a daily monitoring report to the Governor or to his official representative;
4. Ensure confidentiality of all the reports, data and monitoring documentations;
5. Prepare monthly billing for all shipping agents covered by this project;
6. Maintain close coordination with the Office of the Governor as to documentation and operation; and,
7. Establish, appoint and empower its local corporate representative for the sole purpose of maintaining proper coordination between the parties, billing and collecting revenue share from the Province.

Section 8. Environmental Fee

The environmental fee in this environmental monitoring system shall fall under ILA’s User Pay Services scheme, as well as the Internationally accepted Polluter Pays Principle and shall be added to the usual and standard shipping fees and charges prescribed by law, and that the collection of such fees and charges be done by the Province of Zambales on vessels covered herein that pollute the Provincial waters of Zambales as defined by law;

Section 9: Fees and Charges/Payments Remittance

The following fees and charges below using the User Pays Principle/Polluter Pays Principle shall be implemented under this ordinance, thus:
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<th>SHIP TYPE</th>
<th>CHARGE TYPE</th>
<th>PER GWT</th>
<th>PER METER</th>
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**Section 10:** Acquisition of equipment and instrument including expenses in the implementation of this ordinance and operation of equipment.

The cost of acquisition of equipment and instruments for the full implementation of this ordinance as well as payment for replacement of equipment, operation, repair, maintenance thereof including salaries of personnel, shall be included and made subject of the Memorandum of Agreement between the Provincial Government of Zambales and the implementing company.

**Section 11:** Penalty Clause

A penalty of 20% a month shall be billed for unpaid environmental fees on the total billing for the month including penalties and surcharges as may be provided for by this ordinance.

ADOPTED this 14th day of November, 2016.

We hereby certify to the correctness of the foregoing resolution which was duly adopted by the Sangguniang Panlalawigan during its regular session held on November 14, 2016.

[Signature]
KATHRYNIE C. FAN
Secretary to the S.P.
Date Signed: [Date]
REGULAR MEMBERS
FIRST DISTRICT

JONATHAN JOHN F. KHONGHUN
Member
Date Signed:

WILFREDO C. PELARCA, JR.
Member
Date Signed:

JOSE M. GUTIERREZ, JR.
Member
Date Signed:

SECOND DISTRICT

JURY E. DELOSO
Member
Date Signed:

RENATO H. COLLADO
Member
Date Signed:

SANCHO A. ABASTA, JR.
Member
Date Signed:

ROLEX E. ESTELLA
Member
Date Signed:

SATURNINO V. BACTAD
Member
Date Signed:

NOEL S. FERRER
Member
Date Signed:

EX-OFFICIO MEMBERS

GIGI EJANADA-SUAREZ
PCL President
Date Signed:

RIOMELINO A. GOJO
ABC President
Date Signed:

CHITO B. BALINTAY
IPMR
Date Signed:
ATTESTED AND CERTIFIED
TO BE DULLY ADOPTED:

ANGELICA E. MAGSAYSAY
Vice Governor
Date Signed: 

APPROVED: Dec. 19, 2016

ATTY. AMOR D. DELOZO
Governor

DISAPPROVED: 

ATTY. AMOR D. DELOZO
Governor

RC. 570092016.60.1955