



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



**AN ACT PROVIDING FOR THE
IMPLEMENTATION OF THE PROVISIONS OF
THE INTERNATIONAL CONVENTION FOR
THE CONTROL AND MANAGEMENT OF
SHIPS' BALLAST WATER AND SEDIMENTS OF
2004, PROVIDING FOR PENALTIES FOR THE
VIOLATIONS THEREOF, AND FOR OTHER
PURPOSES**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
International Maritime Law at the IMO International Maritime Law
Institute.**

Submitted by: Eusebia A. Cadlum-Boco (Philippines)

Supervisor: Mr. Julius Yano

Academic Year 2017-2018

“Our duty to our children and their children cannot be over-stated. I am sure we would all wish them to inherit a world with clean, productive, safe and secure seas – and the outcome of this Conference, by staving off an increasingly serious threat, will be essential to ensuring this is so”.

*Kitack Lim
Secretary-General of IMO
13 February 2004
IMO Headquarters in London*

INTRODUCTION

The 1982 United Nations Convention on the Law of the Sea (UNCLOS), to which the Philippines is a State Party, provides that¹ —States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto.²

Consistently, the Philippines’ environmental policy is based on its mandate to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. This right to a balanced ecology is evident in the following provisions of the Constitution:

The State shall protect the nation’s marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.³

The State shall protect the rights of subsistence fishermen, especially of local communities, to the preferential use of local marine and fishing resources,

¹ Article 196(1), United Nations Convention of the Law of the Sea (1982), entered into force in 16 November 1994

² Preamble, The Convention for the Control and Management of Ship’s Ballast Water and Sediments, 2004, entered into force on 08 September 2017

³ Section 2, Article XII 1987 Constitution of the Philippines

both inland and offshore. It shall provide support to such fishermen through appropriate technology and research, adequate financial, production, and marketing assistance, and other services. The State shall also protect, develop, and conserve such resources.⁴

Relative to this, the Philippines has entered into international agreements for the protection of the oceans, all the seas and different maritime zones, including enclosed and semi-enclosed seas, and coastal areas and their protection, rational use and development of their living resources,⁵ marine scientific research,⁶ to develop national strategies, plans or programmes for the conservation and sustainable use of biodiversity,⁷ ensuring that the trade of wild animals worldwide does not threaten their survival,⁸ to conserve terrestrial, aquatic and avian migratory species,⁹ among several others.

Locally, laws and regulations have likewise been issued consistent with the constitutional mandate to preserve a balanced ecology and protect the environment. For marine environment alone, laws were legislated to protect endangered species,¹⁰ implementation of fishery laws in the local governments,¹¹ and establishment of environmental impact statement system,¹² to mention a few.

None of these national laws and regulations however address the introduction of invasive species despite existence of threats demonstrated by local¹³ and international studies.

⁴ Section 7, Article XIII, 1987 Constitution of the Philippines

⁵ Rio Declaration on Environment and Development & Chapter 17, Agenda 21 http://www.un.org/depts/los/consultative_process/documents/A21-Ch17.htm

⁶ Part XIII, United Nations Convention on the Law of the Sea (1982), entered into force in 16 November 1994

⁷ Convention on Biological Diversity, entered into force on 29 December 1993. The Philippines ratified the Convention on 12 June 1992.

⁸ Convention on International Trade of Endangered Species of Wild Flora and Fauna, entered into force on 01 July 1975

⁹ Convention on Migratory Species, entered into force on 01 November 1983

¹⁰ Republic Act 8550 (Fisheries Code of the Philippines) 1998

¹¹ Republic Act 7160 (Local Government Code of the Philippines) 1991

¹² Presidential Decree 1586 (Philippines Environmental Impact Statement System)

¹³ Arsenia G. Cagauan, Exotic Aquatic Species Introduction in the Philippines for Aquaculture – A Threat to Biodiversity or A Boon to the Economy? *Journal of Environmental Science and Management* 10(1): 48–62 (June 2007)

BACKGROUND OF BIO-INVASION

An exotic organism or a non-native organism is a plant or animal that has been transplanted by human activity, intentionally or unintentionally, into areas where they do not occur naturally. The issue of exotic species transfer is of international concern because of the high risk of disease introduction, disruptive effects on aquatic communities and environment as well as the degradation of the genetic quality of host species stocks. Exotic species are generally regarded as invasive alien species (IAS) that cause or has the potential to cause harm to the environment, economies and human health.¹⁴ Unlike most species whose introductions result in no or little noticeable change in the local ecosystem diversity and productivity, IAS may under suitable conditions become established and, in the absence of natural controls such as predators, parasites or disease, drastically change the ecosystem.¹⁵

Habitats with similar conditions in different parts of the world may be populated by very different species of animals, algae and microorganisms. This difference is due to the presence of “ecological barriers” including e.g. landmasses, large bodies of waters of different temperature or salinity and ocean currents. The presence of such barriers has allowed areas to evolve in isolation from each other leading to different ecosystem and different species.¹⁶

However, these ecological barriers are now increasingly disrupted by human activities, in particular transport and shipping. Organisms are transported beyond their normal range, in increasing volume and speed, into new areas where they may find suitable environmental conditions and become established. The acceleration is due to the use of ballast water in ships. Ballast is taken by vessels in a particular body of water and discharged in another through vessel operations, impairing the ecological conditions of the receiving waters.

¹⁴Arsenia G. Cagauan, Exotic Aquatic Species Introduction in the Philippines for Aquaculture – A Threat to Biodiversity or A Boon to the Economy? *Journal of Environmental Science and Management* 10(1): 48–62 (June 2007)

¹⁵Tamelander, J and others, Guidelines for Development of a National Ballast Water Management Strategy, GloBallast Monograph Series No. 18 (GEF, UNDP, IMO & IUCN 2010) 2

¹⁶Tamelander, J and others, Guidelines for Development of a National Ballast Water Management Strategy, GloBallast Monograph Series No. 18 (GEF, UNDP, IMO & IUCN 2010) 2

BIO-INVASION IN THE PHILIPPINES

An updated list of exotic aquatic species shows that there have been 181 organisms (28 families) introduced in the Philippines since the 1900s; however, 40 organism have unknown records of their introductions into the country's aquatic ecology. Based on the records of the year of introduction, the highest number of exotic aquatic introductions was in the 1970s, which was coincidentally the green revolution years of the Philippines. About 93% of these exotic species are fishes, 2.67% mollusks and the rest are crustaceans, frogs and turtles.¹⁷

A local study reports the presence of the Charru mussel *Mytella charruanad'Orbigny*, in 1846 (Bivalvia: Mytilidae) at the Manila South Harbor, Manila Bay, Luzon Island, Philippines. In 2014, mussels previously identified as *Mytilus* spp. were reported in Manila Bay. The species was detected as part of an ecological dynamics study of previously-recorded marine non-indigenous mollusk species. DNA barcoding results suggest that the previously identified *Mytilus* are in fact *Mytella charruanad'Orbigny* with an average identity match of 94%. The trends in abundance of *Mytella* during the 2014–2015 sampling season are described and the potential of this new species to become invasive and competitive with native *Perna perna* (Linnaeus, 1758).¹⁸

The Port of Manila is the Philippines' biggest port and is the main shipping port of the country (PPA 2010). Manila's international harbors, North and South Harbors have recorded a total of 4,793 foreign ship calls in 2009 representing 73,000 gross tons of shipping and an estimated 13,000 hours of port service calls (PPA 2010). Manila Bay is also used for mariculture and fisheries. With all of these factors at play, the risk of biological invasions is high.¹⁹

The concept of intergenerational responsibility should be applied to ensure sustainability of life below water so that the rich biodiversity of marine areas of the Philippines will benefit not

¹⁷ Arsenia G. Cagauan, Exotic Aquatic Species Introduction in the Philippines for Aquaculture – A Threat to Biodiversity or A Boon to the Economy? *Journal of Environmental Science and Management* 10(1): 48–62 (June 2007)

¹⁸ Benjamin Vallejo Jr and others, First record of the Charru mussel *Mytella charruanad'Orbigny*, 1846 (Bivalvia: Mytilidae) from Manila Bay, Luzon, Philippines (BioInvasions Records (2017) Volume 6, Issue 1: 49–55 REABIC)

¹⁹ Benjamin Vallejo Jr and others, First record of the Charru mussel *Mytella charruanad'Orbigny*, 1846 (Bivalvia: Mytilidae) from Manila Bay, Luzon, Philippines (BioInvasions Records (2017) Volume 6, Issue 1: 49–55 REABIC)

only the present but also the succeeding generations. This doctrine is consistent to the ruling in *Oposa vs. Factoran*²⁰ citing Section 16 Article II of the 1987 Constitution which states that it is the policy of the State to protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature. Ultimately, this supports the UN Sustainable Development Goal on Life Below Water²¹ and on Poverty.²²

²⁰*Oposa vs. Factoran* [1993] Supreme Court of the Philippines, G.R. No. 101083

²¹ Goal No. 14, 2030 Agenda for Sustainable Development

²² Goal No. 1, *ibid.*

BACKGROUND TO THE ADOPTION OF BWM CONVENTION

Ships are specifically designed and built to move safely through the ocean while carrying cargo. But when the ship is travelling either without cargo, or only partially laden, it must take additional weight on board to enable it to operate effectively and safely by ensuring appropriate freeboard and maintaining stability i.e. keeping sufficient distance between the sea and the deck of the ship to avoid ingress of water and to ensure that the steering rudder is consistently under water. In the distant past, solid materials were used for ballast. However, since the mid 19th century, water has been used as ballast. Ballast water systems are now an integral part of a ship's design and contribute to stability and balance as well as structural integrity of the hull.²³

Pumps fill up the ballast water tanks of a ship from the seas around which the ship is floating. As a result water carried as ballast inevitably contains a large number of organisms of different species at different life stages (e.g. eggs and larvae; cysts, spores or resting stages; and adults). Thus, it constitutes a significant potential vector for spread of IAS.²⁴

In 2004, in order to prevent ecosystem disturbance caused by the injection and discharge of ballast water, the International Maritime Organization (IMO) has adopted The International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention), which aims at preventing the spread of potential invasive aquatic species through the ship's ballast water. BWM Convention mandates all merchant vessels engaged in international trade to install ballast water treatment systems and to release the ballast water only after removing potentially harmful organisms and rendered harmless by mechanical, physical, chemical, and biological processes.²⁵ The BWM Convention entered into force on 8 September 2017.²⁶

²³Tamelander, J and others, Guidelines for Development of a National Ballast Water Management Strategy, GloBallast Monograph Series No. 18 (GEF, UNDP, IMO & IUCN 2010) 4-5

²⁴Tamelander, J and others, Guidelines for Development of a National Ballast Water Management Strategy, GloBallast Monograph Series No. 18 (GEF, UNDP, IMO & IUCN 2010) 5

²⁵HeeCheol Yang and others, Entry Into Force of Ship Ballast Water Management Convention and its Implementation from Perspective of Northeast Asia (Journal of International Maritime Safety, Environmental Affairs, and Shipping 2017) Vol 1, No. 1, 19-21

²⁶ BWM Convention Status

<<http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Pages/Default.aspx>>

THE BALLAST WATER MANAGEMENT CONVENTION OF 2004

The main contents of the Convention on the Ballast Water are as follows:

First, the subject vessel is a vessel that injects and discharges ballast water for international voyage. Non-commercial vessels operated by the State, such as warships, and ships not designed or constructed to carry ballast water are excluded from the scope of the Convention.

Second, two distinct treatment standards are laid out under the Convention that provide standards for the management of ship ballast water; Regulations D-1 and D-2.

D-1 sets the ballast water exchange standards for ships. It requires ships performing ballast water exchange in accordance with this regulation to do so with an efficiency of at least 95% volumetric exchange of ballast water.

D-2 sets the ballast water performance standard for ship ballast water systems. For example, in case of aquatic organisms with a minimum length of 50 µm, the number of viable organisms per cubic meter of ballast water should be 10 or less, and E. coli should be 250 cfu 12 or less per 100 mls.

D-2 standard will take full effect as of 2024. Depending on the year of construction of the ship and the size of the ballast tank, the vessels to be covered by the Convention will gradually be subject to D-2 standard, except when discharging to a treatment system of a ship's ballast water treatment contractor designated by the State Party. D-1 standard shall be satisfied until the date of the application of D-2 standard.

Regulation D-3 of the BWM Convention requires that ballast water management systems used to comply with the Convention must be approved by the Administration taking into account the *Guidelines for approval of ballast water management systems* (G8). The Guidelines (G8) have been revised in 2016 and converted into a mandatory *Code for approval of ballast water management systems* (BWMS Code). Regulation D-3 also requires that ballast water management systems which make use of Active Substances to comply with the Convention shall be approved by IMO in accordance with the *Procedure for approval of ballast water management systems that make use of Active Substances* (G9). Procedure (G9) consists of a two-tier process – Basic and Final Approval – to ensure that the ballast water

management system does not pose unreasonable risk to the environment, human health, property or resources.²⁷

Ships may also exchange ballast waters in a designated ballast water exchange area in accordance with regulation B-4. It requires ships to exchange ballast water in open seas, at least 200 nautical miles away from the coastal waters and at least 200 m in depth. The exchange requirement is set because the harmful aquatic organisms living on the coast are hard to survive in open seas. If no exchange area that meet this exchange standards is designated by agreement between the Parties, treatment systems shall be installed in the area or in the ships by the effective date of the Convention.

Third, ships are required to carry Ballast Water Management Plan, Ballast Water Record Book, international ballast water management certificates depending on the ship size.

Fourth, compliance with the Convention also requires, in addition to control of ballast water, the proper management of sediments in accordance with the Ballast Water Management Plan.²⁸

Lastly, under regulation D-5 Review of Standards by the Organization, IMO is required to review the Ballast Water Performance Standard, taking into account a number of criteria including safety considerations; environmental acceptability, i.e., not causing more or greater environmental impacts than it solves; practicability, i.e., compatibility with ship design and operations; cost effectiveness; and biological effectiveness in terms of removing, or otherwise rendering inactive harmful aquatic organisms and pathogens in ballast water. The review should include a determination of whether appropriate technologies are available to achieve the standard, an assessment of the above mentioned criteria, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States.²⁹

²⁷ Approval of ballast water management systems
<<http://www.imo.org/en/OurWork/Environment/BallastWaterManagement/Pages/Default.aspx>>

²⁸ HeeCheol Yang and others, Entry Into Force of Ship Ballast Water Management Convention and its Implementation fro Perspective of Northeast Asia (Journal of International Maritime Safety, Environmental Affairs, and Shipping 2017) Vol 1, No. 1, 19-21

²⁹ Review of standards <[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-\(BWM\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-(BWM).aspx)>

STRUCTURE OF THE CONVENTION

The Convention is divided into Articles; and an Annex which includes technical standards and requirements in the Regulations for the control and management of ships' ballast water and sediments.

General Obligations

Under Article 2 General Obligations Parties undertake to give full and complete effect to the provisions of the Convention and the Annex in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.

Parties are given the right to take, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments, consistent with international law. Parties should ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

Reception Facilities

Under Article 5 Sediment Reception Facilities Parties undertake to ensure that ports and terminals where cleaning or repair of ballast tanks occurs, have adequate reception facilities for the reception of sediments.

Research and Monitoring

Article 6 Scientific and Technical Research and Monitoring calls for Parties individually or jointly to promote and facilitate scientific and technical research on ballast water management; and monitor the effects of ballast water management in waters under their jurisdiction.

Survey, Certification and Inspection

Ships are required to be surveyed and certified (Article 7 Survey and certification) and may be inspected by port State control officers (Article 9 Inspection of Ships) who can verify that the ship has a valid certificate; inspect the Ballast Water Record Book; and/or sample the ballast water. If there are concerns, then a detailed inspection may be carried out and "the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources."

All possible efforts shall be made to avoid a ship being unduly detained or delayed (Article 12 Undue Delay to Ships).

Technical Assistance

Under Article 13 Technical Assistance, Co-operation and Regional Co-operation, Parties undertake, directly or through the Organization and other international bodies, as appropriate, in respect of the control and management of ships' ballast water and sediments, to provide support for those Parties which request technical assistance to train personnel; to ensure the availability of relevant technology, equipment and facilities; to initiate joint research and development programmes; and to undertake other action aimed at the effective implementation of this Convention and of guidance developed by the Organization related thereto.

Annex - Section A General Provisions

This includes definitions, application and exemptions. Under Regulation A-2 General Applicability: "Except where expressly provided otherwise, the discharge of Ballast Water shall only be conducted through Ballast Water Management, in accordance with the provisions of this Annex."

Annex - Section B Management and Control Requirements for Ships

Ships are required to have on board and implement a Ballast Water Management Plan

approved by the Administration (Regulation B-1). The Ballast Water Management Plan is specific to each ship and includes a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices.

Ships must have a Ballast Water Record Book (Regulation B-2) to record when ballast water is taken on board; circulated or treated for Ballast Water Management purposes; and discharged into the sea. It should also record when Ballast Water is discharged to a reception facility and accidental or other exceptional discharges of Ballast Water.

The specific requirements for ballast water management are contained in regulation B-3 Ballast Water Management for Ships.

Other methods of ballast water management may also be accepted as alternatives to the ballast water exchange standard and ballast water performance standard, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by IMO's Marine Environment Protection Committee (MEPC).

Under Regulation B-4 Ballast Water Exchange, all ships using ballast water exchange should:

1. Whenever possible, conduct ballast water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account Guidelines developed by IMO;
2. In cases where the ship is unable to conduct ballast water exchange as above, this should be as far from the nearest land as possible, and in all cases at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

When these requirements cannot be met areas may be designated where ships can conduct ballast water exchange. All ships shall remove and dispose of sediments from spaces designated to carry ballast water in accordance with the provisions of the ships' ballast water management plan (Regulation B-4).

Annex - Section C Additional Measures

A Party, individually or jointly with other Parties, may impose on ships additional measures to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments. In these cases, the Party or Parties should consult with adjoining or nearby States that may be affected by such standards or requirements and should communicate their intention to establish additional measure(s) to the Organization at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). When appropriate, Parties will have to obtain the approval of IMO.

Annex - Section D Standards for Ballast Water Management

There is a ballast water exchange standard and a ballast water performance standard. Ballast water exchange could be used to meet the performance standard:

Regulation D-1 Ballast Water Exchange Standard - Ships performing Ballast Water exchange shall do so with an efficiency of 95 per cent volumetric exchange of Ballast Water. For ships exchanging ballast water by the pumping-through method, pumping through three times the volume of each ballast water tank shall be considered to meet the standard described. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.

Regulation D-2 Ballast Water Performance Standard - Ships conducting ballast water management shall discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per milliliter less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations.

The indicator microbes, as a human health standard, include, but are not be limited to:

- a. Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 milliliters or less than 1 cfu per 1 gram (wet weight) zooplankton samples ;

- b. Escherichia coli less than 250 cfu per 100 milliliters;
- c. Intestinal Enterococci less than 100 cfu per 100 milliliters.

Ballast Water Management systems must be approved by the Administration in accordance with IMO Guidelines (Regulation D-3 Approval requirements for Ballast Water Management systems). These include systems which make use of chemicals or biocides; make use of organisms or biological mechanisms; or which alter the chemical or physical characteristics of the Ballast Water.

Prototype Technologies

Regulation D-4 covers Prototype Ballast Water Treatment Technologies. It allows for ships participating in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies to have a leeway of five years before having to comply with the requirements.

Review of Standards

Under regulation D-5 Review of Standards by the Organization, IMO is required to review the Ballast Water Performance Standard, taking into account a number of criteria including safety considerations; environmental acceptability, i.e., not causing more or greater environmental impacts than it solves; practicability, i.e., compatibility with ship design and operations; cost effectiveness; and biological effectiveness in terms of removing, or otherwise rendering inactive harmful aquatic organisms and pathogens in ballast water. The review should include a determination of whether appropriate technologies are available to achieve the standard, an assessment of the above mentioned criteria, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States.

Annex- Section E Survey and Certification Requirements for Ballast Water Management

Gives requirements for initial renewal, annual, intermediate and renewal surveys and certification requirements. Appendices give form of Ballast Water Management Certificate and Form of Ballast Water Record Book.³⁰

³⁰[http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-\(BWM\).aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships'-Ballast-Water-and-Sediments-(BWM).aspx)

STATUS OF THE CONVENTION IN THE PHILIPPINES

The International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) is particularly significant for the Philippines because its archipelagic waters are home to rich biodiversity that are vital for the fishing and aquaculture industries such as the seaweeds farms and fish cages, especially in the southern area. We need to protect our waters from non-indigenous predatory invasive marine organisms and pathogens.

The Philippines has started to take steps to ratify the BWM Convention.³¹ The initiative is facilitated by the technical assistance extended by the International Maritime Organization (IMO) and the Norwegian Agency for Development Cooperation (NORAD) through their joint project to “Assist East Asian Countries in Ratifying and Implementing IMO Instruments for the Protection of the Marine Environment.”³² The BWM and the Anti-Fouling System (AFS) Convention were the two priority conventions identified by the Philippines under the project.

Relative to the above initiative, a National Workshop on “The Steps Towards Ratification of the Ballast Water Management Convention with an Emphasis on the Legal Framework,” was conducted on 14-15 October 2013³³ and a Regional Training Course on “Compliance Monitoring and Enforcement of the Ballast Water Management Convention in the ASEAN Region,” was held on 16-18 October 2013³⁴ to prepare the concerned government agencies and their respective personnel, both in the executive and legislative branch of the government, for the implementation of the Convention.

The Filipino Shipowners' Association (FSA) has long been urging the government to ratify the BWM convention, citing the benefit enjoyed by Parties to the convention in respect of exemptions granted to ships that operate exclusively between specified ports or locations.

³¹ Era Andilan P, Readiness of the Philippines for the Implementation of the Ballast Water Management Convention for Domestic Shipping, Philippine MerchantMarine Academy, 2017

³² The IMO-NORAD East Asia Project 2013-2016

<http://www.imo.org/en/OurWork/Environment/MajorProjects/Documents/IMO_NORAD%20V10.pdf>

³³ 2013 PLANS/PROGRAMS/STRATEGIES/PROJECTS IMPLEMENTED, Maritime Industry Authority (MARINA), <http://www.marina.gov.ph/transparency/actualprograms&proj/2013_programs_projects.pdf> 4

³⁴ 2013 PLANS/PROGRAMS/STRATEGIES/PROJECTS IMPLEMENTED, Maritime Industry Authority (MARINA), <http://www.marina.gov.ph/transparency/actualprograms&proj/2013_programs_projects.pdf> 5

Such exemption may find relevance for Philippine-flagged ships operating in Asean ports, subject to the conclusion of bilateral or regional agreements between or among parties.

The concerned agencies, i.e. Maritime Industry Authority (MARINA) on certification of Philippine-flagged ships with Ballast Water Management (BWM) systems, Philippine Coast Guard (PCG) on its port state control inspection duties on BWM equipment aboard ships including the analysis of ballast water, and the Philippine Ports Authority (PPA) on the provision of reception facilities for the discharge of ballast water sediments resulting from the washing of the ballast holds and port clearances, should now consider the way forward on the BWM Convention.

Short of a national law implementing the BWM Convention, the MARINA issued an advisory³⁵ entitled Compliance to the Ballast Water Management Convention, 2004 (BWM Convention) on 15 June 2017 addressed to all ship owners, ship managers, masters and officers, of Philippine registered ships engaged in overseas trade, recognized organizations and others concerned advising them of entering into force of the Convention and informing them that the Philippines is in the process of ratifying the same. In the same advisory, Philippine shipping companies are further advised to secure from their respective Recognized Organizations a Document of Compliance or Statement of Compliance to the BWM Convention for Philippine-registered ships covered under the Convention.

Apart from the substantive reasons discussed above, the above actions by the MARINA and other government agencies and private organizations demonstrate the necessity of immediate implementation of the Convention in the country.

³⁵ MARINA Advisory No. 2017-14, Compliance to the Ballast Water Management Convention, 2004 (BWM Convention) 15 June 2017

IMPLEMENTING INTERNATIONAL CONVENTIONS IN THE PHILIPPINES

Article II, Section 2 of the 1987 Constitution provides that, “the Philippines...adopts the generally accepted principles of international law as part of the law of the land.”³⁶

On the other hand, the procedural dimension of foreign policy-making, which is the ambit of Philippine treaty law and practice, is based on the following:

- (a) The Philippine Constitution, specially Article VII, Section 21 which states that, “No treaty or international agreement shall be valid and effective unless concurred in by at least two-thirds of all the Members of the Senate”;
- (b) The ruling of the Supreme Court of the Philippines in *Commissioner of Customs vs. Eastern Sea Trading*,³⁷ which made a distinction between treaties and executive agreements, the latter requiring the ratification by the President in order to take effect, and related jurisprudence; and
- (c) Executive Order No. 459, series of 1997, which sets the guidelines in the negotiation, conclusion and ratification of international agreements.

Executive Order No. 459³⁸ provides the guidelines in the negotiation of international agreements and their ratification. As a matter of policy, the negotiation of treaties and executive agreements shall be coordinated with, and made only with the participation of the Department of Foreign Affairs (DFA).³⁹

For international agreements that require the concurrence by the Senate of the ratification made by the President, the latter transmits the signed treaty to the Senate. A two-thirds majority of the Members of the Senate is required for concurrence to a treaty. Accession, which is a method by which a state that is not among a treaty as an original signatory becomes a party to it, follows the same ratification/concurrence process.⁴⁰

³⁶ ‘The Philippines renounces was an instrument of national policy, adopts the generally accepted principles of international law as part of the law of the land and adheres to the policy of peace, equality, justice, freedom, cooperation, and amity with all nations.’

³⁷ G.R. No. L-14279, *Commissioner of Customs vs. Eastern Sea Trading*, October 31, 1961

³⁸ Executive Order providing for the Guideline in the Negotiation, Conclusion and Ratification of International Agreements, issued November 25, 1997 by President Fidel V. Ramos.

³⁹ Section 1, Executive Order 459, November 25, 1997

⁴⁰ J. Eduardo Malaya, PHILIPPINE TREATY LAW AND PRACTICE, (Integrated Bar of the Philippines Journal Vol. 35, No. 1, August 2010) 1 - 17

In the case of the BWM Convention which is presently in the process of accession, implementation would require legislation of a law which will be effective within the Philippine jurisdiction.

The process of creating new legislation in domestic law is done by initially passing a bill of the draft law in the House of Representatives or the Lower House. The bill goes through three readings. The first reading consists of reading the title and author(s) and its referral to the appropriate committee(s). The committee then studies the bill and either submits it to the Committee on Rules or is laid on the table. The second reading comes after the bill has been included in the Calendar of Business by the Committee on Rules. This is when sponsorships, debates, and amendments take place. A vote is taken after all the debates and amendments, after which the bill is either archived or goes through a third reading. The third reading happens when the bill goes through a final check and vote via roll call. If it's approved, it is then sent to the upper house, where it goes through the same procedures. If not, it gets archived.⁴¹

After going through three readings from both houses, the conference committee of both houses ratifies the bill and submits it to the President for signing. If, however, there are conflicts in the provisions proposed by both Houses, a Bicameral Conference Committee is called upon to reconcile them.

Once received by the Office of the President, the bill can take one of three routes:

1. *Approved.* Once it is approved by the President, it becomes a Republic Act and takes effect 15 days after publication in the Official Gazette or at least two national newspapers of general circulation;
2. *Vetoed.* The bill is returned to the originating house with an explanation on why it was vetoed. The house can either accept the veto or override it with a 2/3 (majority) vote, after which it is essentially approved, and takes effect 15 days after being publicized.
3. *Lapsed into law.* A bill is said to have lapsed into law if the President fails to act on it within 30 days after receiving the bill. It takes effect 15 days after being publicized.⁴²

⁴¹ Rule IX, Rules of House of Representatives, 16th Congress, as adopted by the 17th Congress, Amendments adopted on July 25, 2016, August 8, 2016 and August 16, 2016

⁴² Section 27(1) Article VI, 1987 Constitution of the Philippines

The constitutionality of a treaty, international or executive agreement, or law enacted in the above procedure may be challenged before the Supreme Court which shall hear the matter en banc.⁴³

This work aims at providing a draft law adopting the relevant provisions of the BWM convention coupled with penal provisions to ensure effective implementation and enforcement at the domestic level. The penalties provided are consistent with existing national law⁴⁴ similarly dealing with domestic application of particular international maritime conventions.

Following this chapter is the draft legislation and a draft instrument of accession on the BWM Convention, respectively.

⁴³ Section 4(2), Article VIII, 1987 Constitution of the Philippines

⁴⁴ Republic Act No. 9483 or the Act Providing for the Implementation of the Provisions of the 1992 International Convention on Civil Liability for Oil Pollution Damage and the 1992 International Convention on the Establishment of An International Fund for Compensation for Oil Pollution Damage, Providing Penalties for Violations thereof, and for other Purposes (approved 02 June 2007)

AN ACT PROVIDING FOR THE IMPLEMENTATION OF THE PROVISIONS OF THE INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS OF 2004, PROVIDING FOR PENALTIES FOR THE VIOLATIONS THEREOF, AND FOR OTHER PURPOSES

Be it enacted by the Senate and the House and Representatives in the Philippine Congress Assembled:

CHAPTER I

GENERAL PROVISIONS

Section 1.Short Title.—This Act shall be known as the “Ballast Water Management Act of 2019.”

Section 2.Declaration of Policy. – The State, in the protection of its marine wealth in its archipelagic waters, territorial sea and exclusive economic zone, and the protection of the rights of subsistence of fishermen, especially of local communities, to the preferential use of local marine and fishing resources,as mandated by the Constitution, adopts internationally accepted measures to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under its jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto. This Act adopts and implements the provisions of the 2004 International Convention for the Control and Management of Ships’ Ballast Water and Sediments.

Section 3.Definition of Terms.—Unless otherwise stated the terms used in this paper shall be interpreted in its legal or technical meaning or as used in international conventions:

- a) *Administration* shall mean the Maritime Industry Authority or the MARINA.
- b) *PCG* shall mean Philippine Coast Guard.
- c) *PPA* shall mean Philippine Ports Authority.
- d) *DENR* shall mean Department of Environment and Natural Resources

- e) *EMB* shall mean the Environmental Management Bureau of the DENR
- f) *ERDB* shall mean the Ecosystem Research and Development Bureau of the DENR
- g) *BMB* shall mean the Biodiversity Management Bureau of the DENR
- h) *UP* shall mean University of the Philippines
- i) *Ballast Water System* shall mean tanks, spaces or compartments on a vessel that are used for carrying loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow the carriage of ballast water, as well as the piping and pumps.
- j) *Reception Facility* shall mean a facility that is capable of receiving, storing, processing or transshipping ballast water or sediments in a manner that reduces the likelihood of harmful aquatic organisms and pathogens being introduced into waters under the Philippine and adjacent jurisdictions.
- k) *IRR* shall mean implementing rules and regulations.

Section 4. Incorporation of the International Convention for the Control and Management of Ships' Ballast Water and Sediments of 2004.—Subject to the provisions of this Act, the International Convention for the Control and Management of Ships' Ballast Water and Sediments of 2004 shall form part of the law of the Republic of the Philippines.

Section 5. Scope of Application.—

- a) Except as expressly provided otherwise, this Act shall apply to ships designed or constructed to carry ballast water:
 - i. entitled to fly the flag of the Philippines;
 - ii. not entitled to fly the flag the Philippines but which operate under its authority; and
 - iii. All other vessels operating and plying in waters under Philippine jurisdiction.
- b) This Convention shall not apply to:
 - i. ships not designed or constructed to carry Ballast Water;
 - ii. ships which only operate in waters under the jurisdiction of the Philippines, unless the Administration determines that the discharge of Ballast Water from such ships would impair or damage

- the environment, human health, property or resources, or those of adjacent or other States;
- iii. ships of flying the flag of the Philippines which only operate in waters under the jurisdiction of another State or States, subject to the authorization and notification of the latter State/s for such exclusion as may be confirmed by the Administration.
 - iv. ships which only operate in waters under the jurisdiction of another Party and on the high seas, except for ships not granted an authorization pursuant to immediately preceding paragraph, unless the Administration determines that the discharge of Ballast Water from such ships would impair or damage the environment, human health, property or resources of the Philippines, or those adjacent of other States;
 - v. any warship, naval auxiliary or other ship owned or operated by another State and used, for the time being, only on government non-commercial service; and
 - vi. permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.
- c) Ships flying flags of States which are not parties to the Convention and plying within territorial waters shall not be accorded favourable treatment as is given to ships belonging to Member States.

CHAPTER II

GENERAL PROVISIONS

Section 5. Full and complete effect to the Ballast Water Management Convention.-

- a) Unless otherwise specifically provided, this Act undertakes to give full and complete effect to the provisions of this Convention and the Annexes thereto in order to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.

b) The State, through the Administration shall endeavour to co-operate for the purpose of effective implementation, compliance and enforcement of the Convention.

c) The State, through the Administration, undertakes to encourage the continued development of Ballast Water Management and standards to prevent, minimize and ultimately eliminate the transfer of Harmful Aquatic Organisms and Pathogens through the control and management of ships' Ballast Water and Sediments.

d) Agencies taking action pursuant to this Act shall endeavour not to impair or damage the environment, human health, property or resources within and outside the Philippine territory.

e) The Administration and concerned agencies should ensure that Ballast Water Management practices used to comply with this Act do not cause greater harm than they prevent to the environment, human health, property or resources within the territory or that of other States.

f) The Administration shall encourage ships entitled to fly the Philippine flag, and to which this Act applies, to avoid, as far as practicable, the uptake of Ballast Water with potentially Harmful Aquatic Organisms and Pathogens, as well as Sediments that may contain such organisms, including promoting the adequate implementation of recommendations developed by the Organization.

g) The State, through the Administration shall endeavour to co-operate under the auspices of the Organization to address threats and risks to sensitive, vulnerable or threatened marine ecosystems and biodiversity in areas beyond the limits of national jurisdiction in relation to Ballast Water Management.

CHAPTER III

SYSTEM OF COMPULSORY INSPECTION AND CERTIFICATION

Section 6. Compulsory Inspection. - Vessels of 400 gross tonnage or more to which this Regulation applies, excluding floating platforms, UFAs and FPAD Units, shall be subject to the surveys set out in Section E, Regulation E-1 of the Annex to the Convention.

Section 7. Inspectors. – The survey shall be carried out by the PCG or by competent inspectors designated by the Administration.

Section 8. Issuance of Certificates. - For each survey as prescribed in this Chapter, the Authority shall issue a certificate, when the ships to which Regulation E-1 applies, have satisfactorily fulfilled the requirements established therein.

The certificates shall be issued in English and in the Form set out in Appendix I of the Annex to the Convention and shall have validity in accordance with the provisions of Regulation E-3 of the Annex to the Convention.

Section 9. Issuance or Indorsement of a Certificate by Another Party. - At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that the provisions of this Act and the Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with Regulation E-3 of the Annex to the Convention.

CHAPTER IV

BALLAST WATER CONTROL, MANAGEMENT AND STANDARDS

Section 10. Ballast Water Management Plan. – Each ship shall carry on board and implement ballast water management plan in accordance with Regulation B-1 of the Annex to the Convention

Section 11. Ballast Water Record Book. – a) Each ship shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system and, which shall at least contain the information specified in Appendix II and compliant with the requirements of Regulation B-2 of the Annex to the Convention.

b) Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

c) In the event of the discharge of Ballast Water pursuant to Regulations A-3, A-4 or B-3.6 of the Convention or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by the Convention, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.

d) The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

Section 12. Discharge of Ballast Water. – a) Ships shall conduct ballast water exchange at a distance of at least 200 nautical miles from the Philippine coast at a depth of 200 meters and in strict adherence with the procedures established in Sections B, C and D of the Annex to the Convention. This operation shall be registered on the record book onboard the ship which shall be available to the authorities upon arrival for verification.

b) If the Administration based on a well-founded cause, determines that the discharge of ballast water may endanger the environment, human health, property in the territory and that of other States, the discharge as referred to above shall not be authorized.

c) Vessels shall ensure that the discharge and disposal of sediments are done in accordance with the Management Plan as set out in Regulation B-5 of the Annex.

d) Shipping agencies representing ships that require the discharge of ballast water in the waters of Philippine jurisdiction must submit to the PPA, by electronic means, the FAL 65 page, or in printed form, the management report of the ship's ballast water within forty-eight (48) hours before the ship arrives at port.

e) It is the obligation of the shipowner and the master to ensure that the crew in charge of the control and management of ballast water and the sediments of ships are qualified to carry out such operation.

f) The Administration, through an Administrative Circular and in coordination with PPA and PCG, shall have the power to introduce additional measures in implementing this Chapter, if necessary, to prevent, reduce or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' ballast water and sediments. These additional measures shall be in accordance with Regulation C-1 of Section C of the Annex to the Convention and the related Guideline issued by the IMO.

g) In the same manner as authorized in the immediately preceding paragraph, the Administration may likewise grant exemptions in waters under Philippine jurisdiction, to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in this Act and the Convention in accordance with the provisions of Regulation A-4 of the Annex to the Convention and the related Guideline issued by the IMO. Any exemptions granted under this paragraph shall be recorded in the Ballast Water record book.

CHAPTER V

SEDIMENTS RECEPTION FACILITIES

Section 13. Installation of Sediments Reception Facilities. – The PPA shall provide for repair or cleaning installations for ballast water tanks as well as reception of sediments of ballast water having the necessary means to safely remove such sediments without deterioration or causing damage to the environment.

Section 14. Sub-contracting of Sediments Reception Facilities. – The PPA, subject to the requirements of Republic Act 9184 or the Procurement Law of the Philippines and other applicable laws, and in coordination with the Administration, may sub-contract to other government agencies or specialized institutions, the repair or cleaning services of ballast tanks as well as reception of sediments of ballast water in the ports. Applicable charges and fees shall be determined by the PPA and shall be provided for in the sub-contracting agreement subject to due notice to the public.

Section 15. Approval of Reception Facilities. – The PPA, in coordination with the Administration and the PCG, through an Administrative Circular, shall draw up guideline that determine the adequacy of reception facilities in ports, so as to ensure proper functioning without causing unnecessary delays and allow evacuation of sediments without damaging or deteriorating the environment, human health, property, and natural resources in the territory and that of other States. The guideline shall be developed taking into account this Act, the Convention and related IMO Guidelines.

CHAPTER VI

SCIENTIFIC AND TECHNICAL RESEARCH

Section 16. Sampling. – The PPA, through a duly authorized inspector, may randomly sample ballast water from ships arriving at Philippine ports, in order to carry out scientific laboratory tests to determine possible contamination by invasive species. The PPA, in coordination with the Administration, shall issue and Administrative Circular, in accordance with this Act, the Convention and related IMO Guidelines, setting guidance on ballast water sampling and analysis for the purpose of determining whether the ship is in compliance with the Convention.

Section 17. Authority to conduct sampling. – The sampling referred to in the immediately preceding section shall be carried out by competent laboratories duly authorized by the PPA through an agreement entered into without prejudice to the requirements of RA 9184.

Section 18. Costs. – The costs of the sampling and/or inspection conducted as prescribed in this Chapter shall be borne by the ship on which such sampling and/or inspection has been performed.

Section 19. Contamination with invasive species. – Where the sampling and/or inspection reveals introduction of invasive species through a ship's ballast water, a report must be submitted to the PPA for appropriate action which shall be covered in the guideline set forth in accordance to Section 16 and 17 of this Chapter.

CHAPTER VII

INSPECTIONS

Section 20. Inspection on ships.—Every ship to which this Act applies may be subject, at any port or terminal within the Philippine jurisdiction, to an inspection by officials duly authorized by the Administration, PPA and PCG, for the purpose of determining whether the ship complies with the provisions of this Act and the Convention. Such inspection shall be limited to:

- a) *Verifying existence of a valid certificate on board;*
- b) *Inspection of ballast water log book; and*
- c) *Sampling of ship's ballast water.*

No activity prescribed in this article shall cause unnecessary delay the ship's operation, movement and exit.

Section 21. Ships without valid certificate on board.— Where a ship does not carry a valid Certificate or there are clear grounds for believing that:

- a) the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or
- b) the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures;

a detailed inspection may be carried out.

Section 22. Prohibition of discharge of ballast water.—In the circumstances given in the immediately preceding Section, the inspector shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Section 23. Violation of the Act. – If a ship, within the Philippine jurisdiction, is detected to have violated this Act, the Administration may, in addition to any sanctions described in Section 27 or any action described in this Act, take steps to warn or detain the ship. The Administration, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources within the territory or that of the neighboring States.

Section 24. Validation of information received from another port. – If the sampling described in Section 20(c) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Administration shall prohibit such ship from discharging Ballast Water until the threat is removed.

Section 25. Request for investigation by a State Party. - Inspection may also be conducted to inspect a ship when it enters the ports or offshore terminals under the Philippine jurisdiction, if a request for an investigation is received from any State Party to the Convention, together with sufficient evidence that a ship is operating or has operated in violation of a provision in the Convention. The report of such investigation shall be sent to the Party requesting it and to the competent authority of the Administration of the ship concerned so that appropriate action may be taken.

Section 26. Notification to the concerned Flag State. - If an inspection conducted pursuant to this Act indicates a violation of the provisions herein and the Convention, the ship shall be notified of such violation and the corresponding sanctions. A report shall be forwarded to the flag Administration or the consul or diplomatic representative of the Flag State, including any evidence of the violation and actions taken by the Administration.

CHAPTER VIII

PENAL PROVISIONS

Section 27. Violations and corresponding penalty. – a) If the sampling and/or inspection duly conducted in accordance with the preceding Chapter of this Act finds violation which, after due process as prescribed in the IRR, the following sanctions shall be applied:

(1) Ships of 500 gross tons (GRT) and below - not less than One hundred thousand pesos (P100,000.00) but not more than Two hundred-fifty thousand pesos (P250,000.00);

(2) Ships of above 500 to 1,000 GRT - not less than Two hundred fifty thousand pesos (P250,000.00) but not more than Five hundred thousand pesos (P500,000.00);

(3) Ships of above 1,000 to 5,000 GRT - not less than Five hundred thousand pesos (P500,000.00) but not more than One million pesos (P1,000,000.00);

(4) Ships of above 5,000 to 10,000 GRT - not less than One million pesos (P1,000,000.00) but not more than Five million pesos (P5,000,000.00);

(5) Ships of above 10,000 to 20,000 GRT - not less than Five million pesos (P5,000,000.00) but not more than Ten million pesos (P10,000,000.00); and

(6) Ships of above 20,000 GRT - not less than Ten million pesos (P10,000,000.00) but not more than Fifteen million pesos (P15,000,000.00).

The above mentioned amounts shall be meted on the first offense and shall be doubled for every succeeding offense as the case may be.

b) Any person who shall refuse, obstruct, or hamper the entry of the duly authorized representatives of the Administration or any person authorized under this Act aboard any Ship or establishment pursuant to this Act shall be liable to pay a fine not exceeding One hundred thousand pesos (P100,000.00); and

(c) Any ship apprehended for violation of this Act may be subjected to detention.

(d) Payment of the prescribed penalties shall not prejudice the Administration from imposing administrative penalties against Philippine registered ships for acts described herein which contravenes the conditions of its registration.

The fines prescribed in this Section shall be increased by at least ten percent (10%) every three years to compensate for inflation and to maintain the deterrent function of such fines.

CHAPTER IX

FINAL PROVISIONS

Section 28. Implementing Rules and Regulations. – The MARINA, in coordination with PCG, PPA, BFAR, DENR – through its Environmental Management Bureau (EMB) and Ecosystem Research and Development Bureau (ERDB) and Biodiversity Management Bureau (BMB), - University of the Philippines (UP) Institute of Biology, representatives from concerned Non-Government Organizations (NGOs) and the stakeholders in the maritime and shipping industry and the academe shall promulgate an implementing rules and regulations to ensure efficient and effective implementation of this Act within six (6) months from effectivity as provided herein. *Provided*, That the failure to promulgate the said rules and regulations shall not prevent or delay the effectivity and implementation of this Act in accordance with Section 31 hereof.

Section 29. Separability Clause. - Should any part of this Act be declared unconstitutional or invalid, the other parts or provisions hereof not affected thereby shall continue to be in full force and effect.

Section 30. Repealing Clause. - All laws, executive orders, presidential decrees, implementing rules and regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed or modified accordingly.

Section 31.Effectivity. – This Act shall take effect within fifteen (15) days from publication in the Official Gazette or a newspaper of general circulation.

Approved,

PANTALEON ALVAREZ

Speaker of the House
of Representatives

AQUILINO "KOKO"

PIMENTEL, III
President of the Senate

This Act was passed by the Senate and the House of Representatives on _____ and _____, respectively.

CESAR STRAIT PAREJA

Secretary General
House of Representatives

LUTGARDO B. BARBO

Secretary of the Senate

Approved:

RODRIGO ROA DUTERTE

President of the Philippines

Republic of the Philippines

DEPARTMENT OF FOREIGN AFFAIRS

Manila

INSTRUMENT OF ACCESSION

Whereas, the International Convention for the Control and Management of Ships Ballast Water and Sediments 2004, was adopted by International Maritime Organization, in London, on 15 February 2004;

Whereas, Article 17 of the aforesaid Convention provides that State may accede to the Convention by deposit of an instrument to that effect with the Secretary General of the International Maritime Organization;

Whereas, as prescribed by the 1987 Constitution of the Philippines, accession to the Convention has been approved by at least two thirds vote of the Senate;

Now, therefore, be it known that the the Republic of the Philippines hereby confirm and carry out all the stipulations contained therein.

IN WITNESS WHEREOF, this Instrument of Accession is signed and sealed by the Department of Foreign Affairs under the express authority of the President of the Republic of the Philippines.

_____, Manila, Philippines.

ALAN PETER S. CAYETANO