



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



***THE CONTROL AND MANAGEMENT OF
SHIPS' BALLAST WATER AND SEDIMENTS
ACT***



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

**Submitted By: MELISA S. WRIGHT
(THE BAHAMAS)**

Supervisor: MR. RUBEN MACEDA

Academic Year 2008/2009

ACKNOWLEDGEMENT

The completion of this Project would not have been possible were it not for the invaluable guidance and constant advice given to me by my Supervisor, Mr. Ruben Maceda and also to my personal tutor Ms. Elda Belja. To them I am most grateful.

DEDICATION

This is dedicated to the Holy Father for without him I am nothing and to my dear mother, thank you for your unending love and support.

DECLARATION OF AUTHENTICITY

This is to certify that the work and research in this project is my own personal work.

Melisa S. Wright

April 2009

TABLE OF CONTENTS

	Page
Acknowledgement.....	(i)
Declaration.....	(ii)
Declaration of Authenticity.....	(iii)
I. <u>EXPLANATORY NOTE</u>	
1.1 Introduction.....	1
1.2 Aims and Objectives of The Convention.....	2
1.3 Legal System of the Commonwealth of The Bahamas.....	5
1.4 Process of Implementing a Treaty into Domestic Law.....	6
1.5 Introduction of Bills.....	7
1.6 Content of The Convention (Special Provisions.....	10
1.7 Main features of The Convention.....	12
(i) General Obligation	12
(ii) Reception Facilities.....	13
(iii) Research and Monitoring.....	13
(iv) Survey and Certification	13
(v) Inspection.....	14
(vi) Technical Assistance and Regional Cooperation.....	14
(vii) Annex A-General Provisions.....	15
(viii) Annex B-Management and Control Requirement for Ships.....	16
(ix) Annex C-Additional Measures.....	17
(x) Annex D-Standards for Ballast Water Management.....	18
(xi) Prototype Technologies.....	19
(xii) Annex E-Survey and Certification Requirements for Ballast Water Management.....	19
(xiii) Guidelines.....	20

II. DRAFT LEGISLATION

2.1 Proposed Act entitled '*The Control and Management of Ships' Ballast water and Sediments Act*'22

2.2 Schedule.....29

2.3 Annex-Regulation A.....29

2.4 Annex-Regulation B.....32

2.5 Annex-Regulation C.....35

2.6 Annex-Regulation D.....37

2.7 Annex- Regulation E.....39

2.8 APPENDIX I.....44

2.9 APPENDIX II.....50

I. EXPLANATORY NOTE

1.1 INTRODUCTION

The introduction of invasive aquatic species through ships ballast water has been identified as one of the four greatest threats to the world's oceans affecting biodiversity, fisheries/food-security and human health with massive global economic impacts besides land based sources of marine pollution, overexploitation of marine resources and physical alteration/destruction of marine habitat. Addressing this problem is perhaps one of the greatest environmental challenges facing the International Maritime Organization (IMO) and the international maritime industry this century.¹

The harmful effects of unwanted species in ships ballast water was first reported to the IMO in 1988 when Canada informed the Marine Environment Protection Committee (MEPC) about invasive aquatic species in the Great Lakes. In 1991, the MEPC in response adopted the first voluntary guidelines for preventing the introduction into the marine environment of unwanted aquatic organisms and pathogens from ships' Ballast Waters and sediment discharges.

Following the UN Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, the MEPC guidelines were reviewed and adopted as an Assembly resolution in 1993. In 1997, the twentieth session of the IMO Assembly adopted resolution A. 868 (20). The new resolution requested Governments to take urgent action in applying the guidelines and to report any experience gained in their implementation to the MEPC. The resolution further requested the MEPC to work towards the completion of legally binding provisions on ballast water management together with guidelines for their uniform and effective implementation. From 1999 onwards the Ballast Water Working Group established by the MEPC in 1994, focused on the preparation of a free standing Convention on the control and management of ships' ballast water and sediments.

¹ Raaymakers, S. "The GEF/UNDP/IMO Global Ballast Water Management Programme- Integrating Science, Shipping and Society to Save our Seas", Journal of Marine design and Operations Vol. 2003, No. 4 (December 2003), pg. 2

In accordance with article 2(b) of the Convention of the IMO, the Council agreed in principle to convene a diplomatic conference in 2003 to consider the adoption of the instrument. At its eighty-ninth session in November 2002, the Council reconsidered the matter, in view of the preparations made by MEPC, and approved the convening of a Diplomatic Conference in early 2004. The decision of the Council was endorsed by the twenty-third session of the Assembly in December 2003 and the International Conference on Ballast Water Management for Ships was held at IMO's headquarters in London from 9-13 February, 2004.

The Conference adopted the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as 'the Convention'), together with four Conference Resolutions on the 13th February, 2004.² The aim of this Convention is to prevent the devastating effects of the spread of harmful aquatic organisms carried by ships' ballast water.

1.2 AIMS AND OBJECTIVES OF THE CONVENTION

The aim of every convention is to address a problem or an issue which has to be dealt with on an international level.

As already stated, the aim of the Ballast Water Convention is 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, hence its title: the Control and Management of ships' Ballast Water and Sediments.

Global shipping moves 80% of the world's commodities and it is fundamental to world trade³. The movement of humans and ships across the oceans and the constant change in trade routes has been responsible for much of the spread of invasive species around the world. Today, one of the greatest threats posed to humans may come from hitchhiking organisms we cannot even see. One of the most common methods of transportation for foreign species today is in cargo ships, particularly in ballast water.

² The International Convention of Ships' Ballast Water and Sediments 2004, International Maritime Organization, London, 2005.

³ National Research Council: Stemming the Tide: Controlling Introductions of Nonindigenous species by Ship's Ballast Water National Academies Press 1993 page 1

Ships pick up ballast water at their point of origin to help stabilize the huge vessels on their long journey overseas. Ballast water has been described as the “marine cocktail on the move.” Once the vessel reaches its destination, the water is often dumped into the local harbour where the invasive species establish populations in the surrounding waters.

It is estimated that between three and ten billion tons of ballast water carrying more than 7,000 different species at any given time, are shipped around the world every year.⁴ This means that every day species are taken up on board with ballast water, and then discharged at another place in the world, in which they originally never existed. Fortunately, the vast majority of marine species transported in ballast water do not survive the journey, as the ballasting and deballasting cycle can be quite hostile to the organism survival. However, when all factors are favourable, a new species survives in the new environment and will establish a reproductive population in the host environment threatening biodiversity, fisheries and aquaculture. Some introduced species severely deplete native populations or deprive them of food. Others form colonies which can smother existing fauna and introduce toxic aquatic single celled organisms which can affect or even kill shellfish, fish, seabird and even humans.

In this way ecosystems are changed and the effects in many areas around the world have been devastating. Quantitative data show that bio-invasions are continuing to increase at an alarming rate, in many cases exponentially, and new areas are being invaded all the time. As volumes of sea borne trade continue to overall increase, the problem may not have reached its peak yet. The Great Lakes between Canada and the United States, has witnessed the introduction of the European Zebra mussel (*Dreissena polymorpha*) which has resulted in the expenses of billions of dollars for pollution control and cleaning of fouled underwater structures and waterpipes. Also, the introduction of the American comb jelly (*Mnemiopsis leidy*) to the Black and Azov Seas, causing the near extinction of anchovy and sprat fisheries⁵.

⁴ <http://www.undp.org/gef/05/portfolio/writeups/iw/globallast.html>

⁵ http://www.imo.org/Conventions/mainframe.asp?topic_id=867

Indeed, The Bahamas is not immune to the devastating effects these organisms have on its native ecosystem. The effect of ballast water has been felt in the Bahamian waters. When ballast water is pumped out in Bahamian waters, many invasive species are introduced which wreak havoc on the Bahamian native ecosystem. However, the most devastating species which is not native to the Atlantic and which is now seen in Bahamian waters is the lionfish. The lionfish a colourful Indo-Pacific species with plume of spines has had an impact on coral reef ecosystems throughout the US eastern seaboard and southward into the Caribbean. They have been sighted as far as Bermuda, as far north as Rhode Island, and as far south as Jamaica and the Cayman Islands, and they are now common throughout the islands of The Bahamas in shallow and deep reefs, off piers, and beaches, as well as in coastal mangroves that are important habitat for juvenile fish.

The lionfish species is responsible for decimating a wide range of native fish populations through predation and competition and is responsible for feeding on Bahamian juvenile grouper and snapper. Lionfish feed on young grunts, snapper, grouper and other fish that are important for food and export. If the invasion continues, the fishing industry will suffer. In fact it is estimated that the lionfish has reduced the abundance of small fish on coral reefs by 80% in just five weeks. Lionfish also has the potential to decrease the abundance of ecologically important species, such as parrot fishes and other herbivorous reef fishes, which are crucial for preventing seaweeds from overgrowing corals.⁶

These examples illustrate that with the introduction of these catastrophic species around the world and indeed in the Caribbean region particularly, The Bahamas has resulted in severe economic and/ or ecological impact in their host environments. The only way to control and prevent further allocation of such species that are harmful to a new environment is to effectively treat the ballast water, before it is discharged back into the ocean. The kind of treatment can be mechanical or gas based, heat or electro based, chemical based or it can be a system of multiple technologies and combinations. So far the international community is still researching what the best

⁶ Smith, Larry. *'Invasions of the Lionfish Threatens Bahamian Fisheries'* The Nassau Guardian October 21st, 2008

working and cost-effective technology is. But whatever technology is used, its only purpose is to kill any marine life within the ballast water to prevent further harm to the marine environment and its already stressed biological diversity. The mandatory use of these techniques provided by- in the ideal case- all ports worldwide to all ships carrying ballast water is the objective of this Convention.

1.3 LEGAL SYSTEM OF THE COMMONWEALTH OF THE BAHAMAS

The Bahamas, officially the Commonwealth of The Bahamas, is a sovereign independent nation with its political and legal traditions born out of the Common law system and closely mirror the legal system in the United Kingdom and the Westminster system. The Bahamas is a member of the Commonwealth of Nations, with Queen Elizabeth as head of state represented by a Governor-General.

Legislative power is vested in The Parliament of The Bahamas which consists of the Governor-General⁷, a Senate and a House of Assembly⁸.

The Senate consists of sixteen members⁹. Nine Senators are appointed by the Governor General acting in accordance with the advice of the Prime Minister.¹⁰ With four Senators appointed by the Governor General acting in accordance with the advice of the Leader of the Opposition and three Senators appointed by the Governor General acting in accordance with the advice of the Prime Minister after consultation with the Leader of the Opposition.¹¹

The House of Assembly consists of thirty-eight members or such greater number of members as may be specified by an Order made by the Governor General. The members of the House of Assembly are known as “Members of Parliament” and are persons who, being qualified for election as Members of Parliament in accordance with the provisions of the Constitution. When involved in the law-making process, the underlying principle which Parliament must focus upon is to ensure that the laws

⁷ Article 32 of The Constitution

⁸ Article 38

⁹ Article 39(1)

¹⁰ Article 39(2)

¹¹ Article 39(4)

which are either made or incorporated into Bahamian law are laws that sustain the peace, order and good government of The Bahamas. Further, this power shall be exercised by Bills which are passed by both the Senate and House of Assembly and subsequently assented to by the Governor General in accordance with Article 63 of the Constitution.

1.4 THE PROCESS OF IMPLEMENTING A TREATY INTO DOMESTIC LAW

The Bahamas is a dualist country, which recognizes the difference between national and international law and requires the translation of the latter into the former. Without this translation, international law does not exist as law.

The process of incorporation of legislation can be found within the Constitution. The Bahamas' Constitution is silent on the implementation of a treaty into the Bahamian legal landscape. Thus, it is necessary to look at the practice of incorporation of an international treaty into domestic law.

The implementation of an international convention into the relative domestic law takes place by adoption of that particular treaty. Once The Bahamas becomes a party to a particular convention, there are two approaches which may be used to give effect to the international convention on the domestic plane. One way in which the international convention will be implemented into the existing maritime legislation is by adopting substantive provisions, that is, by adopting the language taken from the Convention. The second way in which an international convention will be adopted into existing legislation is by stating in the Act that the Convention has the force of law in which case, the text of the Convention is inserted in a Schedule to the Act. However, if existing law is deficient on the subject matter of a particular treaty, then legislation will have to be drafted to address the provisions of the convention in question. The competent body to submit a law on the enactment of an international treaty is the Office of The Attorney General (OAG). The OAG is tasked with drafting the Bill and presenting the Bill to the Cabinet and if necessary to the House of Assembly

1.5 INTRODUCTION OF BILLS

Subject to the provisions of the Constitution, Parliament may make laws for the peace, order and good government of The Bahamas.¹² The Parliament of The Bahamas has the power to make laws and that power shall be exercised by Bills passed by both Houses, either without amendments or with such amendments only as are agreed to by both Houses, and assented to by the Governor General in accordance with Article 63 of the Constitution.

Once a subject matter arises which is desirous of new legislation, there is a detailed method in which a Bill becomes an Act. On the instructions of the Minister the Permanent Secretary of the Ministry responsible for the subject matter prepares a memorandum setting out the main points on which legislation is proposed and seeking approval from The Cabinet of The Bahamas for a Bill to be drafted. Once the Cabinet authorizes the preparation of the Bill, drafting instructions will be conveyed to the Director of Legal Affairs of the OAG for the drafting of a Bill. The instructions should be as full as can be setting out in ordinary language the points and principles on which legislation is required.

The Director of Legal Affairs sends the Bill with Objects and Reasons to the relevant Ministry for approval. Once approval is given by the Ministry, the Director of Legal Affairs will make the necessary copies of the Bill with the Objects and Reasons for the Cabinet. The Minister responsible for the Bill will present the Bill to the Cabinet with a Memorandum explaining the need for legislation and showing how the Bill meets it. The Cabinet examines the Bill in detail and makes any necessary amendments. If the Cabinet decides that the Bill or its Objects and Reasons should be amended, the Secretary to the Cabinet will send an extract of the Cabinet conclusion to the Director of Legal Affairs for the amendments to be effected. Once the amendments have been effected, the Minister will return the amended Bill to the Cabinet. If the amendments are not of major importance, the Bill will not be returned to the Cabinet. The Cabinet conclusion would give authority to proceed with the Bill without further reference to Cabinet.

¹² Article 52(1) of the Constitution

Once the Bill is approved by the Cabinet, with or without amendments, the Cabinet will authorize the Minister to introduce it into Parliament. Under Article 59 of the Constitution, a member of the Senate or House of Assembly may introduce a Bill or propose a motion for debate. The Bill will be taken through the various stages in the House of Assembly and the Senate following the Rules of the respective legislative Houses.

When a Bill has been passed by both Houses, the original copy is signed by the President of the Senate, the Speaker of the House of Assembly and sent to the Secretary of the Cabinet. However, certified copies of the Bill will be sent to the Cabinet Office. The certified copies will then be sent to the Director of Legal Affairs with a request for the Assent Certificate of the Attorney General. The Assent Certificate states that from the legal point of view, it would be proper for the Governor General to assent to the Bill. Once the Assent Certificate is obtained, the original Bill is sent to the Governor General requesting the Governor General's assent to the Bill. However a Bill cannot be presented to the Governor General unless it has been passed by both the Senate and House of Assembly either without amendments or with such amendments only as are agreed by both the Senate and the House of Assembly.

The Governor General acts on the advice of the Cabinet as to whether or not to assent to the Bill and the Cabinet is advised by the Attorney General upon the issuance of the Assent Certificate by the Attorney General. If he gives his assent, then the Bill will become an Act and shall have the force of law in The Bahamas and be binding on the domestic courts and the citizens of The Bahamas.

Once the Governor General has assented to the Bill, a Public Seal is affixed to the Bill and the Bill is therefore returned to the Secretary to the Cabinet. To avoid confusion, all Bills passed by Parliament in one year should be assented to before the end of the year. The Secretary to the Cabinet then arranges for the Act to be published in the Gazette at the earliest opportunity.

An Act then comes into operation on the date of Assent unless it contains within itself some other date of commencement. For example, some Acts come into force on a date to be notified in the Gazette, sometimes different parts of an Act come into force on a date to be notified in the Gazette; sometimes different parts of an Act come into force at different times. Where the Act has been brought into force by Notice, a marginal reference to the Statutory Instrument number is inserted.

Since the 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments has not been enacted into the Bahamian legislation, in order for this Convention to be incorporated into domestic law, enabling legislation will have to be drafted as per the procedure outlined above.

The 2004 International Convention for the Control and Management of Ships' Ballast Water and Sediments is currently not in force. However, once it enters into force, The Bahamas is urged to become a party and incorporate the Convention through this Act.

Under Control and Management of Ship's Ballast Water and Sediments Act (hereinafter referred to as "The Act"), the Minister has the power to make Regulations or issue Notices to expound upon the provisions of the Act and the Ballast Water Convention to clarify their applicability or interpret any of the provisions. In so doing, the Minister shall be guided by any directives or decisions of the International Maritime Organisation or any other competent body with knowledge on ballast water.

In the Bahamas, there is a Port Authority who is responsible for the management of all Ports in The Bahamas pursuant to the Port Authorities Act. However, pursuant to the Act, the Port Authority is also given responsibilities in addition to those prescribed under the Port Authority Act. Under the Act, the Port Authority is given overall responsibility on the control and management of ships' ballast water. However, to facilitate their responsibilities under the Act, the Port Authority shall establish a Control Unit. With respect to the issuance of a Ballast Water Certificate, the Port Authority shall issue such Certificate in accordance with the Schedule annexed to the Act. Further, under the Act, the Port Authority is responsible for the

approval of the ballast water management plan and systems on board all ships and it shall present a quarterly report to the Minister of the regulation and control measures of ships' ballast water and management systems.

Ships that are calling at any Port in The Bahamas also have responsibilities under the Act. Pursuant to section 14 of the Act, ships who call on Bahamian Ports shall have on board a Ballast Water Management Plan which shall be approved by the Port Authority. Ships shall also carry on board a Ballast Water Management Record Book which is to be inspected by the Control Unit pursuant to section 15. Further, ships are to conduct ballast water exchange before entering Bahamian waters. If such ship shall fail to comply with the provisions laid down in the Act, such ship will be guilty of an offence.

The Act also contains a schedule which is the provisions of the Convention and the Annexes attached thereto. By attaching the text of Articles 2 to 16 of the Convention, and the Annexes, the Convention will be given the force of law in The Bahamas.

The Control and Management of Ballast Water and Sediments Act is a comprehensive law that ensures that the spirit and essence of the Convention are domesticated into the Bahamian legal framework.

1.6 CONTENT OF THE CONVENTION (SPECIAL PROVISIONS)

In 1992 the United Nations Conference on Environment and Development (UNED) through its Agenda 21 called on the IMO and other international bodies to take action to address the transfer of harmful organisms by ships.¹³ However, even before the call came out from the UNED, the introduction of harmful invasive species has been the target of action by the IMO since the early 1970s. In fact, IMO adopted several resolutions in the 1970's on ship's ballast water and it had been active in ballast water issues for over ten years. However, most of the early resolutions of the IMO dealing on the issue of ballast water were focused more on the danger of spreading epidemic diseases to other countries through ship's ballast water.

¹³ <http://globallast.imo.org>

However, between the years 1992 and 2002, IMO was quite active in the protection of the marine environment. In 1996, the MEPC considered the hazards to the marine environment through the bio-pollution by adopting Guidelines. The purpose of these Guidelines was to minimize the introduction of undesired aquatic organisms and pathogens from ships' ballast water and sediments discharges.¹⁴ Subsequently, in 1997, member States of the IMO adopted Resolution A. 868(20) which sets out Guidelines regarding the control and management of ships' ballast water. Management and control measures recommended by the Guidelines include:

- Minimising the uptake of organisms during ballasting by avoiding areas in Ports where populations of harmful organisms are known to occur, in shallow water and in darkness where bottom-dwelling organisms may rise in the water column.
- Cleaning ballast tanks and removing muds and sediments that accumulates in these tanks on a regular basis which may harbour harmful organisms.
- Avoiding unnecessary discharge of ballast.
- Undertaking ballast water management procedures, including:
 - exchanging ballast water at sea replacing it with 'clean' open ocean water. Any marine species taken on at the source Port are less likely to survive in the open ocean where environmental conditions are different from coastal and port waters.
 - Non-release or minimal release of ballast water
 - Discharge to onshore reception and treatment facilities.¹⁵

Further, in 1999, the IMO through the MEPC proposed three options for establishing regulations for the management and control of ships' ballast water. The first option was to incorporate amendments to the existing annex to MARPOL 73/78. The second

¹⁴Fonseca de Souza, Rolim. *'The International Law on Ballast Water Preventing Biopollution'* pg. 99

¹⁵ <http://globallast.imo.org>

option was to adopt a Protocol to add a new Annex to MARPOL 73/78 and the third option was a new convention to deal specifically with ballast water.¹⁶

No doubt the third option was the one that the MEPC decided to undertake. It was not until 2002, that the impetus gained momentum. In that year, the World Summit for Sustainable Development (WSSD) which took place in Johannesburg, South Africa reaffirmed Agenda 21 and through its Plan for Implementation urged the IMO to finalize the Ballast Water Convention to quickly address the growing issue of invasive species in ballast water.

In that same year 2002, the IMO Council agreed to convene a diplomatic conference in 2004 to consider the adoption of a draft Convention for the Control and Management of Ships' Ballast Water and Sediments. The Ballast Water Convention was adopted on the 13th February, 2004. It will enter into force 12 months after the ratification by 30 States, representing 35 percent of the world's merchant shipping tonnage. To date it has not entered into force.

The Convention structure and regulatory regime is similar to that of MARPOL 73/78. As the first specific regulatory regime on ballast water, the Convention expanded essential principles, rights and obligations with respect to the protection of the marine environment contained in UNCLOS and the Biodiversity Convention.¹⁷

The Convention is divided into 22 Articles which sets out the rights and duties for the Flag, Coastal and Port States. The Convention also contains an Annex. The Annex which forms an integral part of the Convention contains the technical aspects in areas such as (a) general provisions; (b) management and control requirements for ships; (c) special requirements in certain areas; (d) standards for ballast water management; and (e) survey and certification requirements for ballast water management. There are also a set of 17 guidelines required under the Convention and adopted through MEPC Resolutions which provide technical guidance for the uniform implementation of the provisions of the Convention.¹⁸

¹⁶ Op cit fn. 14 pg. 97

¹⁷ Ibid pg. 98-99

¹⁸ Ibid pg. 100

1.7 MAIN FEATURES OF THE CONVENTION

GENERAL OBLIGATIONS

Article 2 of the Convention entitled '*General Obligations*' imposes upon State parties an obligation to 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.

Article 2 also grant State parties a discretion to act individually or jointly with other Parties, in applying 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. However, such measures must be consistent with the international law. However, in carrying out their undertaking, State parties should ensure that ballast water management practices do not cause greater harm that they prevent to their environment, human health, property or resources, or those of other States.¹⁹

RECEPTION FACILITIES

Another important Article under the Convention is Article 5. It governs sediment receptions facilities. Pursuant to this Article, the Convention again imposes an obligation upon the Port or Coastal State parties to undertake to ensure that ports and terminals designated by the Port or Coastal State where cleaning or repair of ballast tanks occurs are equipped with adequate reception facilities for the reception of sediments. The Article also state that such reception facilities are to operate without unduly delaying vessels. The facilities must also provide for the safe disposal of sediments so that it does not do more harm than good by damaging the State's environment, human health or property resources or those of other States.

RESEARCH AND MONITORING

¹⁹ http://www.imo.org/Conventions/mainframe.asp?topic_id=87

Article 6 entitled '*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.²⁰

SURVEY, AND CERTIFICATION

The Convention also requires State parties to ensure that ships flying its flag or operating under its authority and those which are subject to survey and certification are surveyed and certified in accordance with the regulations contained in Annex C.

INSPECTION

Inspection of ships is very important in the control and management of ballast water. The Convention has, pursuant to Article 9 provides that inspections of vessels are allowed with respect to a ship in any port or offshore terminal of another State so as to monitor whether the ship is in compliance with its requirements. However, the inspections are limited to (i) verifying the existence of a valid International Ballast Water Certificate, which if valid shall be accepted; (ii) inspection of the ballast water book, (iii) and/or taking a sample of the ship's ballast water in accordance with IMO guidelines. 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.

Further pursuant to Article 10 paragraph 4, other States can request a State Party to carry out inspections. However, the requesting State must have sufficient evidence that the vessel has violated or has operated in violation of the Convention. Pursuant to Article 12 such inspections should not unduly delay the ship. If a ship has been unduly delayed, compensation may be available to the ship.

TECHICAL ASSISTANCE AND REGIONAL COOPERATION

²⁰ Ibid.

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 thereto.²¹

²¹ Ibid.

ANNEXES

The annex to the Convention is an integral part of the Convention. The Annexes include the technical provisions on preventing biopollution of the marine environment from ships.²² The Annex contains five sections (i) Section A contains General Provisions (ii) Section B- Management and Control Requirements for Ships (iii) Section C-Special Requirements in Certain Areas (iv) Section D- Standards for Ballast Water Management and (v) Section E- Survey and Certification Requirements for Ballast Water Management.²³

Each section contains Regulations which outlines technical standards and requirements. Appendix I to the Convention provides a template for the form of the International Ballast Water Management Certificate to be adopted by member States to the Convention. Appendix II to the Convention provides a form for the Ballast Water Record book.

ANNEX –SECTION A GENERAL PROVISIONS

Section A contains the general provisions of the Convention. It is within this section that the definitions, general applicability of the Convention, exceptions and exemptions to the Convention and terms for equivalent compliance for specific classes of vessels are contained.

Under Regulation A-2, ships are required to conduct the discharge of ballast water only through ballast water management, in accordance with the provisions of the Annex.

Exceptions to the application of the requirements to ballast water management for ships or any measures adopted by a State party that are consistent with international law, with respect to special requirements in certain areas are contained in Regulation A-3.

²² Op cit fn 14 pg. 127

²³ Ibid

Regulation A-4 gives the permanent exemptions that States, in waters under their jurisdiction, may grant with regard to the application of Regulation B3 or C1.

Under Regulation A-5 States administration are required to determine equivalent compliance for pleasure craft that are used solely for recreation or competition or craft that are used primarily for search and rescue. Such equivalent compliance must be determined in accordance with IMO Guidelines.

ANNEX –SECTION B MANAGEMENT AND CONTROL REQUIREMENTS FOR SHIPS

Section B governs the primary control and management measures required by ships. Pursuant to Regulation B-1, ships are required to have on board and implement a Ballast Water Management Plan approved by the Administration of the flag State. The Ballast Water Management Plan should take into account IMO Guidelines. 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.

Pursuant to Regulation B-2 ships must have a Ballast Water Record Book 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 book should be maintained for a further three years under the shipping company's control. The book contains the ballast water operation information as set out in Appendix 2 of the Convention.

There are also specific requirements for ballast water management which are contained in Regulation B-3- Ballast Water Management for Ships which are as follows:

1. Ships constructed before 2009 with a ballast water capacity of between 1500 and 5000 cubic meters must conduct ballast water management that at least meet the ballast water exchange standards or the ballast water performance standards until

- 2014, after which time it shall at least meet the ballast water performance standard.
2. Ships constructed before 2009 with a ballast water capacity of less than 1500 or greater than 5000 cubic meters must conduct ballast water management that at least meets the ballast water exchange standards or the ballast water performance standards until 2016, after which time it shall at least meet the ballast water performance standard.
 3. Ships constructed in or after 2009 with ballast water capacity of less than 5000 cubic meters must conduct ballast water management that at least meets the ballast water performance standard.
 4. Ships constructed in or after 2009 but before 2012, with a ballast water capacity of 5000 cubic meters or more shall conduct ballast water management that at least meets the standard described in regulation D-1 or D-2 until 2016 and at least the ballast water performance standard after 2016.
 5. Ships constructed in or after 2012, with a ballast water capacity of 5000 cubic meters or more shall conduct ballast water management that at least meets the ballast water performance standard.²⁴

Regulation B-4 '*Ballast Water Exchange*' governs ballast water exchange. It provides that ballast water exchange should be conducted at least 200 nautical miles from the nearest land. IMO Guidelines should be taken into account. If there is a danger that the ship will deviate from its intended voyage to conduct ballast water exchange then under the Regulations, it should not deviate or delay the voyage in order to comply with such requirements.

ANNEX -SECTION C ADDITIONAL MEASURES

State parties can impose more stringent measures to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments.

²⁴ Regulation B-3

The Convention makes it mandatory upon State parties to communicate their intention to establish additional measures to the IMO within 6 months of the projected date of the implementation of the measures. However, the requirement of notification to the IMO is waived in emergency or epidemic situations. Secondly, Regulation C-2 requires State parties to be in consultation with nearby States which may be affected by such measures.

ANNEX –SECTION D STANDARDS FOR BALLAST WATER MANAGEMENT

Pursuant to Regulation D1- and D2, 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

Regulations D1 and D2 provide for specific Ballast Water exchange rate and performance 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 per cent volumetric exchange is met.²⁵

REGULATION D-2 BALLAST WATER PERFORMANCE STANDARD

With regard to the performance standard, ships are required to discharge less than 10 viable organisms per cubic meter greater than or equal to 50 micrometers in minimum dimension and less than 10 viable organisms per millimeter less than 50 micrometers in minimum dimension and greater than or equal to 10 micrometers in minimum

²⁵ Regulation D1 (2)

dimension; and discharge of the indicator microbes shall not exceed the specified concentrations.²⁶

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

- a. Toxicogenic *Vibrio cholerae* (01 and 0139) 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 milliliters²⁷

According to Regulation D-3, ballast water management systems must be approved by the Administration in accordance with IMO Guidelines. These systems must be safe for the ship, its equipment and the crew.

PROTOTYPE TECHNOLOGIES

Regulation D-4 governs '*Prototype Ballast Water Treatment Technologies*'. Under this Regulation, States are to test and evaluate promising Ballast Water treatment technologies taking into account IMO Guidelines. However, the Regulation places a limitation in that States are only allowed to use a minimum number of ships which will be necessary to test such technologies. Technologies review should not just be constrained to IMO Guidelines but they should also take into account safety issues with respect to the ship and the crew; environmental acceptability, practicability, cost effectiveness and biological effectiveness.²⁸

ANNEX- SECTION E SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT

Under the Convention, the flag State has the obligation to ensure that each ship to which Regulation E-1 is applicable, is issued a certificate after successful fulfillment of standards under the rules with respect to survey and certification requirements for ballast water management. A ship must undergo a specific initial survey and an

²⁶ Regulation D2 (1)

²⁷ Regulation D2 (2)

²⁸ Regulation D-5 (2)

interim survey to ensure compliance with the rules laid out in the Convention. According to Regulation E-2 (1), the flag State is to ensure that a ship after successful completion of the survey conducted in Regulation E-1, shall be issued a Ballast Water Management Certificate which is to be recognized by other State parties as if the same Certificate was issued by them. The duration of the Certificate is also given. It is valid for a period of five years and a ship will be during those five years subject to periodic surveys. However, if the ship is transferred to another flag registry, the Certificate ceases to have any validity.

GUIDELINES

In order to achieve a uniform approach to ships' ballast water and sediments control and management, the Convention adopted 17 Guidelines to support the uniform implementation of the Convention. The 17 Guidelines are:

1. Guidelines for Sediment Reception Facilities
2. Guidelines on Ballast Water Sampling
3. Guidelines for Ballast Water Management Equivalent Compliance
4. Guidelines for Ballast Water Management and The Development of Ballast Water Management Plans
5. Guidelines for Ballast Water Reception Facilities
6. Guidelines for Ballast Water Exchange
7. Guidelines for Ballast Water Risk Assessment
8. Guidelines for the Approval of Ballast Water Management Systems
9. Procedures for Approvals of Ballast Water Management Systems that Make Use of Active Substances
10. Guidelines for Approval and Oversight of Prototype Ballast Water Treatment Technology Programmes
11. Guidelines for Ballast Water Exchange Design and Construction Standards
12. Guidelines on Design and Construction to Facilitate Sediment Control on Ships

13. Guidelines for Additional Measures Regarding Ballast Water Management including Emergency Situations
14. Guidelines on Designation of Areas for Ballast Water Exchange
15. Ballast Water Guidelines for Port State Control
16. Guidelines for Ballast Water Exchange in the Antarctic Treaty
17. Ballast Water Guidelines for Flag State Surveys and Inspections.

The Guidelines are relevant in the interpretation and application of the rules and standards provided for in the Convention.

THE CONTROL AND MANAGEMENT OF SHIPS BALLAST WATER AND SEDIMENTS ACT

An Act to make provision concerning the control and management of ballast water and sediments by ships; to give effect to the International Convention for the control and management of ships' ballast water and sediments; and for matters connected with and incidental to the foregoing.

*[Assent xx day of xxx 2009]
[Commencement xx day of xxx 2010]*

PART I PRELIMINARY

1. This Act may be cited as the Control and Management of Ships' Ballast Water and Sediments Act.
2. In this Act, unless the context otherwise requires-
 - “**Bahamian ship**” means a ship registered under the Merchant Shipping Act;
 - “**Bahamian waters**” means all areas of the sea subject to the jurisdiction of The Bahamas, and includes territorial waters, archipelagic waters and internal waters navigable by seagoing ships;
 - “**Ballast water**” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;
 - “**Ballast Water Management**” means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments;
 - “**Ballast Water Management Plan**”, in relation to any provision, includes a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplement Ballast Water Management practices.
 - “**Ballast Water Record Book**” means a record book in written or electric form which contains the information of the ship's ballast water operations on board.
 - “**Baselines**” means the line from which the width of the territorial sea of The Bahamas is measured.
 - “**Certificate**” means the International Ballast Water Management Certificate
 - “**Committee**” means the Marine Protection Environment Committee of the Organization
 - “**contravene**”, in relation, to any provision, includes a failure to comply with that provision;

“Control Unit” means a Unit established by the Port Authority to assess the effects of ballast water in Bahamian waters.

“Convention” means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments adopted on the 13th February, 2004 including any amendment or Protocol related thereto as may from time to time be ratified, acceded to or accepted by the Government of The Bahamas;

“foreign” means-

- (a) in relation to a ship, registered under a law of a country other than The Bahamas; and;
- (b) in relation to the Convention, a ship, that does not fly the flag of a State party to the Convention;

“Government” means the Government of The Commonwealth of The Bahamas;

“Gross tonnage” means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 or any successor Convention;

“Harmful Aquatic Organisms and Pathogens” means aquatic organisms or pathogens which, if introduced into the sea including estuaries, or into fresh water courses, may create hazards to the environment, human health, property or resources, impair biological diversity or interfere with other legitimate uses of such areas;

“the Minister” means the Minister for the time being responsible for Maritime Affairs;

“Organization” means the International Maritime Organization;

“Port” means any area in The Bahamas constituted and defined as a port area under the Port Authorities Act, or constituted as a port or harbour under any other law;

“Port Authority”, in relation to a port, means a port authority appointed for the port under the Port Authorities Act or having control over the port under any other law;

“Reception facilities” means facilities to be provided for the discharge of sediments by vessels.

“Sediments” means matter settled out of Ballast Water within a Ship;

“Ship” means a vessel of any type flying the flag of a State party to this

Convention, whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSU's and FPSOs and which is anchored or moored in Bahamian waters.

APPLICATION

3. This Act shall apply to all ships except warships, naval auxiliary ships owned or operated by a State for non-commercial purposes and ships that do not carry ballast water on board. However, such ships are to be set in a manner consistent, reasonably in conformity with the present Act.
4. The provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, together with the Annexes thereto, shall have the force of law shall, unless otherwise provided in this Act and notwithstanding the provisions of any other law, form part of and be enforceable as part of the laws of The Bahamas and shall apply to all Bahamian ships and all other ships when they are in Bahamian waters.

PART II POWERS OF THE MINISTER

5. The Minister shall make Regulations or issue notices to expound upon the provisions of this Act or the Ballast Water Convention, or to clarify their applicability and interpretation as he considers appropriate and in so doing, and without prejudice to the generality of the foregoing, the Minister shall be guided by any decisions, directive, guidelines or resolutions of the Organisation or any other body or Organisation with an appropriate knowledge or competence on the subject matter.
6. If it appears to the Minister that the Government has agreed to any revision to the Convention, he may-
 - (a) by Order-
 - (i) make such modifications to the Convention
 - (ii) make regulations as he considers appropriate in consequence of the revision.
7. Nothing in any modification made by virtue of subsection (6) shall affect any rights or liabilities arising before the day the modification come into force.

PART III PREVENTION OF THE TRANSFER OF HARMFUL AQUATIC ORGANISMS AND PATHOGENS

THE PORT AUTHORITY

8. For the purposes of this Act, the duties of the Port Authority shall be-
 - a. to establish and monitor a Control Unit for the purpose of assessing the effects of ballast water in Bahamian waters ;

- b. to have such reception facilities in all international ports in the Bahamas to facilitate the discharge of sediments by all ships calling on ports within The Bahamas;
 - c. to present a quarterly report to the Minister of the regulation, control and monitoring of ships' ballast water and sediments that are anchored or moored in Bahamian waters;
 - d. to approve the Ballast Water and Management Plan on board all ships that are anchored or moored in Bahamian waters;
 - e. to approve the Ballast Water Management systems in accordance with the Organization's Guidelines;
 - f. to designate areas for the conduct of ballast water exchange by ships;
 - g. to promote and facilitate scientific and technical research on ballast water management, and monitor the effects of ballast water management in Bahamian waters;
 - h. to oversee the survey of ships for the purposes of this Act;
9. The Port Authority shall issue a Certificate in accordance with this Act and the Schedule annexed hereto.
10. For the purposes of Section 9, the Port Authority shall, subject to the provisions of this Act and the annexed Schedule, determine the conditions of issue and validity of such certificates.
11. The Port Authority shall authorize any of the officers or employees of the Control Unit to board any ship whether the ship is in port or outside port, for the purposes of determining whether a vessel is in compliance with the provisions of this Act.

THE CONTROL UNIT

12. There shall be a Control Unit which shall consist of adequate members comprised from the Port Authority and members of the Royal Bahamas Defence Force including the Controller thereof.
13. The Control Unit shall, inter alia, and upon the instructions of the Port Authority:
- a. continuously assess the effects of ballast water and sediments in Bahamian waters;
 - b. examine the ballast water management facilities and the ballast water management plan and practices on board ships that are anchored or

moored in Bahamian waters and report such findings to the Controller of the Unit who shall report the findings to the Port Authority;

- c. inspect the Ballast Water book; and/or
- d. sample the ballast water;
- e. verify if there is on board a valid Certificate, and which if valid, shall be accepted;
- f. notify the owner or master of any ship of any concerns of the discharge of ballast water that has caused a threat to the Bahamian marine environment;
- g. take such steps as may be necessary to ensure that the ship shall not discharge Ballast water until it can do so without presenting a threat to the Bahamian marine environment, human health, property or marine resources;
- h. intercept, detain and release any ship as it relates to offences arising out of this Act;

PART IV SHIP RESPONSIBILITIES

- 14. Ships to which this Act applies shall have and implement on board a Ballast Water Management Plan, approved by the Port Authority and which is subject to the provisions of the Schedule attached hereto. The Ballast Water Management Plan shall meet the requirements provided for in the Schedule attached hereto and the necessary information shall be inserted completely and truthfully without delay.
- 15. Ships to which this Act applies shall have on board a Ballast Water Record Book to record when ballast water is taken on board; circulated or treated for Ballast Water Management purposes and discharged into the sea. The ship shall also record when ballast water is discharged to a reception facility and shall also record any accidental or other exceptional discharges of ballast water.
- 16. If a ship, which is anchored and moored in Bahamian waters, does not have and implement a Ballast Water Management Plan on board, shall be guilty of an offence.
- 17. If any ship which is anchored and moored in Bahamian waters does not have a Ballast Water Record Book shall be guilty of an offence.
- 18. Any person guilty of an offence under sections 16 and 17 shall be liable on conviction on information to a fine not exceeding One Hundred Thousand Dollars.

19. All ships which are anchored and moored in Bahamian waters shall conduct ballast water exchange in accordance with the standards set out in the First Schedule of the Regulations to this Act.
20. All ships using ballast water exchange, before entering Bahamian waters, shall-
 - (1) whenever possible, conduct ballast water exchange at least 200 nautical miles away from the Bahamas baseline and in water at least 200 meters in depth;
 - (2) if the ship is unable to conduct ballast water exchange as mentioned in subsection 1, then the ship shall conduct ballast water management practices at least 50 nautical miles away from the Bahamas baseline and at least in waters 200 meters in depth.
21. All ships conducting ballast water exchange shall remove and dispose of sediments from spaces designated by the Port Authority to carry ballast water in accordance with the ship's Ballast Water Management Plan.
22. If any ship contravenes paragraphs 19, 20 and 21 shall be guilty of an offence and liable on information to a fine not exceeding Seventy-Five Thousand Dollars.
23. All ships shall conduct ballast water management pursuant to the guidelines laid down in Annex D-2 of the Convention.
24. If any ship contravenes paragraph 23 shall be guilty of an offence and liable on information to a fine not exceeding Seventy-Five Thousand Dollars.
25. The Minister may be Order published in the *Gazette* provide that sections 14-24, together with any other provisions of this Act, shall apply to a ship:-
 - (a) that is foreign;in such cases and circumstances as may be specified in the Order, and subject to such exceptions, adaptations, and modifications, if any, as may be so specified.

PART V ENFORCEMENT

26. Without any powers exercisable by virtue of the preceding provisions of this Act, the Port Authority shall appoint adequate persons from the Control Unit who shall have power to:-
 - (1) go on board and inspect the vessel or any part thereof, or any of the machinery or equipment on board the vessel for the purpose of examining the ballast water management practices on board the vessel;
 - (2) require the production of the ballast water record book required to be carried or records to be kept;
 - (3) copy any such entry into such book and require the master to certify that the copy is a true copy of the entry.

27. Any person exercising any powers conferred by paragraph 26 shall not necessarily detain or delay the vessel from proceeding on any voyage.
28. If any person willfully obstructs a person acting in the exercise of any power conferred by virtue of section 26, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars.
29. Where a fine imposed by a court in proceedings against the master or owner of a vessel for an offence under this Act is not paid by the time ordered by the court, the court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid, to be levied by distress and sale of the vessel.

PART VI JURISDICTION

28. For the purposes of this Act, an action brought in The Bahamas for failing to comply with any provisions of this Act may be brought in the Supreme Court of The Bahamas.
29. All the provisions of existing legislation and regulations relating to the protection of the marine environment and pollution control that are in force immediately before the commencement of this Act, shall, so far as they are consistent with the present Act continues to be in force.

SCHEDULE

REGULATIONS FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

SECTION A - GENERAL PROVISIONS

Regulation A-1 Definitions

For the purposes of this Annex:

1. “Anniversary date” means the day and the month of each year corresponding to the date of expiry of the Certificate.
2. “Ballast Water Capacity” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging Ballast Water, including any multi-use tank, space or compartment designed to allow carriage of Ballast Water.
3. “Company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code.
4. “Constructed” in respect of a ship means a stage of construction where:
 - (1) the keel is laid; or
 - (2) construction identifiable with the specific ship begins;
 - (3) assembly of the ship has commenced comprising at least 50 tonnes or 1 percent of the estimated mass of all structural material, whichever is less; or
 - (4) the ship undergoes a major conversion.
5. “Major conversion” means a conversion of a ship:
 - (1) which changes its ballast water carrying capacity by 15 percent or greater, or
 - (2) which changes the ship type, or
 - (3) which, in the opinion of the Administration, is projected to prolong its life by ten years or more, or .4 which results in modifications to its ballast water system other than component replacement-in-kind. Conversion of a ship to meet the provisions of regulation D-1 shall not be deemed to constitute a major conversion for the purpose of this Annex.

6. From the nearest land“ means from the baseline from which the territorial sea of the territory in question is established in accordance with international law except that, for the purposes of the Convention, —from the nearest land“ off the north-eastern coast of Australia shall mean from a line drawn from a point on the coast of Australia in

latitude 11°00' S, longitude 142°08' E to a point in latitude 10°35' S, longitude 141°55' E

thence to a point latitude 10°00' S, longitude 142°00' E

thence to a point latitude 9°10' S, longitude 143°52' E

thence to a point latitude 9°00' S, longitude 144°30' E

thence to a point latitude 10°41' S, longitude 145°00' E

thence to a point latitude 13°00' S, longitude 145°00' E

thence to a point latitude 15°00' S, longitude 146°00' E

thence to a point latitude 17°30' S, longitude 147°00' E

thence to a point latitude 21°00' S, longitude 152°55' E

thence to a point latitude 24°30' S, longitude 154°00' E

thence to a point on the coast of Australia

in latitude 24°42' S, longitude 153°15' E.

7. “**Active Substance**” means a substance or organism, including a virus or a fungus that has a general or specific action on or against Harmful Aquatic Organisms and Pathogens.

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.

Regulation A-3 Exceptions

The requirements of regulation B-3, or any measures adopted by a Party pursuant to Article 2.3 and Section C, shall not apply to:

1. the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea; or
2. the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:
 1. provided that all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimizing the discharge; and
 2. unless the owner, Company or officer in charge wilfully or recklessly caused damage; or

3. the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship; or
4. the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or
5. the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Annex.

Regulation A-4 Exemptions

1. A Party or Parties, in waters under their jurisdiction, may grant exemptions to any requirements to apply regulations B-3 or C-1, in addition to those exemptions contained elsewhere in this Convention, but only when they are:
 1. granted to a ship or ships on a voyage or voyages between specified ports or locations; or to a ship which operates exclusively between specified ports or locations;
 2. effective for a period of no more than five years subject to intermediate review;
 3. granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in paragraph 1.1; and
 4. granted based on the Guidelines on risk assessment developed by the Organization.
2. Exemptions granted pursuant to paragraph 1 shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.
3. Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States. Any State that the Party determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.
4. Any exemptions granted under this regulation shall be recorded in the Ballast Water record book.

Regulation A-5 Equivalent compliance

Equivalent compliance with this Annex for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres, shall be determined by the Administration taking into account Guidelines developed by the Organization.

SECTION B- MANAGEMENT AND CONTROL REQUIREMENTS FOR SHIPS

Regulation B-1 Ballast Water Management Plan

Each ship shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization. The Ballast Water Management plan shall be specific to each ship and shall at least:

1. detail safety procedures for the ship and the crew associated with Ballast Water Management as required by this Convention;
2. provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set forth in this Convention;
3. detail the procedures for the disposal of Sediments:
 1. at sea; and
 2. to shore;
4. include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;
5. designate the officer on board in charge of ensuring that the plan is properly implemented;
6. contain the reporting requirements for ships provided for under this Convention; and
7. be written in the working language of the ship. If the language used is not English, French or Spanish, a translation into one of these languages shall be included.

Regulation B-2 Ballast Water Record Book

1. 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.
2. 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.
3. In the event of the discharge of Ballast Water pursuant to regulations A-3, A-4 or B-3.6 or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Convention, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.
4. 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.
5. Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master. The entries in the Ballast Water record book shall be in a working language of the ship. If that language is not English, French or Spanish the entries shall contain a translation into one of those languages. When entries in an official national language of the State whose flag the ship is entitled to fly are also used, these shall prevail in case of a dispute or discrepancy.
6. Officers duly authorized by a Party may inspect the Ballast Water record book on board any ship to which this regulation applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of a Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

Regulation B-3 Ballast Water Management for Ships

1. A ship constructed before 2009:
 1. with a Ballast Water Capacity of between 1,500 and 5,000 cubic metres, inclusive, shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2014, after which time it shall at least meet the standard described in regulation D-2;
 2. with a Ballast Water Capacity of less than 1,500 or greater than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-1 or regulation D-2 until 2016, after which time it shall at least meet the standard described in regulation D-2.

2. A ship to which paragraph 1 applies shall comply with paragraph 1 not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.
3. A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5,000 cubic metres shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.
4. A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5,000 cubic metres or more shall conduct Ballast Water Management in accordance with paragraph 1.2.
5. A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in regulation D-2.
6. The requirements of this regulation do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organization for such facilities.
7. Other methods of Ballast Water Management may also be accepted as alternatives to the requirements described in paragraphs 1 to 5, 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 the Committee.

Regulation B-4 Ballast Water Exchange

1. A ship conducting Ballast Water exchange to meet the standard in regulation D-1 shall:
 1. whenever possible, conduct such Ballast Water exchange at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the Guidelines developed by the Organization;
 2. in cases where the ship is unable to conduct Ballast Water exchange in accordance with paragraph 1.1, such Ballast Water exchange shall be conducted taking into account the Guidelines described in paragraph 1.1 and 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.
2. In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph 1.1 or 1.2, the port State may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in paragraph 1.1.

3. A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of paragraph 1.
4. A ship conducting Ballast Water exchange shall not be required to comply with paragraphs 1 or 2, as appropriate, if the master reasonably decides that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.
5. When a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water record book.

Regulation B-5 Sediment Management for Ships

1. All ships shall remove and dispose of Sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.
2. Ships described in regulation B-3.3 to B-3.5 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account guidelines developed by the Organization. Ships described in regulation B-3.1 should, to the extent practicable, comply with this paragraph.

Regulation B-6 Duties of Officers and Crew

Officers and crew shall be familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

SECTION C -SPECIAL REQUIREMENTS IN CERTAIN AREAS

Regulation C-1 Additional Measures

1. If a Party, individually or jointly with other Parties, determines that measures in addition to those in Section B are necessary to prevent, reduce, or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments, such Party or Parties may, consistent with international law, require ships to meet a specified standard or requirement.
2. Prior to establishing standards or requirements under paragraph 1, a Party or Parties should consult with adjacent or other States that may be affected by such standards or requirements.
3. A Party or Parties intending to introduce additional measures in accordance with paragraph 1 shall:

1. take into account the Guidelines developed by the Organization.
2. 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). Such communication shall include:
 1. the precise co-ordinates where additional measure(s) is/are applicable
 2. the need and reasoning for the application of the additional measure(s), including whenever possible, benefits;
 3. a description of the additional measure(s); and
 4. any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).
3. to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea, as appropriate, obtain the approval of the Organization.
4. A Party or Parties, in introducing such additional measures, shall endeavour to make available all appropriate services, which may include but are not limited to notification to mariners of areas, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ship.
5. Any additional measures adopted by a Party or Parties shall not compromise the safety and security of the ship and in any circumstances not conflict with any other convention with which the ship must comply.
6. A Party or Parties introducing additional measures may waive these measures for a period of time or in specific circumstances as they deem fit.

Regulation C-2 Warnings Concerning Ballast Water Uptake in Certain Areas and Related Flag State Measures

1. A Party shall endeavour to notify mariners of areas under their jurisdiction where ships should not uptake Ballast Water due to known conditions. The Party shall include in such notices the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. Warnings may be issued for areas:
 1. known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;

2. near sewage outfalls; or
 3. where tidal flushing is poor or times during which a tidal stream is known to be more turbid.
2. In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, a Party shall notify the Organization and any potentially affected coastal States of any areas identified in paragraph 1 and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. The Party shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

Regulation C-3 Communication of Information

The Organization shall make available, through any appropriate means, information communicated to it under regulations C-1 and C-2.

SECTION D - STANDARDS FOR BALLAST WATER MANAGEMENT

Regulation D-1 Ballast Water Exchange Standard

1. Ships performing Ballast Water exchange in accordance with this regulation shall do so with an efficiency of at least 95 percent volumetric exchange of Ballast Water.
2. 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 in paragraph 1. 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

1. Ships conducting Ballast Water Management in accordance with this regulation 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 millilitre 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 described in paragraph 2.
2. Indicator microbes, as a human health standard, shall include:

1. Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per 1 gram (wet weight) zooplankton samples ;
2. *Escherichia coli* less than 250 cfu per 100 millilitres;
3. Intestinal Enterococci less than 100 cfu per 100 millilitres.

Regulation D-3 Approval requirements for Ballast Water Management Systems

1. Except as specified in paragraph 2, Ballast Water Management systems used to comply with this Convention must be approved by the Administration taking into account Guidelines developed by the Organization.
2. Ballast Water Management systems which make use of Active Substances or preparations containing one or more Active Substances to comply with this Convention shall be approved by the Organization, based on a procedure developed by the Organization. This procedure shall describe the approval and withdrawal of approval of Active Substances and their proposed manner of application. At withdrawal of approval, the use of the relevant Active Substance or Substances shall be prohibited within 1 year after the date of such withdrawal.
3. Ballast Water Management systems used to comply with this Convention must be safe in terms of the ship, its equipment and the crew.

Regulation D-4 Prototype Ballast Water Treatment Technologies

1. For any ship that, prior to the date that the standard in regulation D-2 would otherwise become effective for it, participates in a programme approved by the Administration to test and evaluate promising Ballast Water treatment technologies, the standard in regulation D-2 shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.
2. For any ship that, after the date on which the standard in regulation D-2 has become effective for it, participates in a programme approved by the Administration, taking into account Guidelines developed by the Organization, to test and evaluate promising Ballast Water technologies with the potential to result in treatment technologies achieving a standard higher than that in regulation D-2, the standard in regulation D-2 shall cease to apply to that ship for five years from the date of installation of such technology.
3. In establishing and carrying out any programme to test and evaluate promising Ballast Water technologies, Parties shall:
 1. take into account Guidelines developed by the Organization, and
 2. allow participation only by the minimum number of ships necessary to effectively test such technologies.

4. Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.

Regulation D-5 Review of Standards by the Organization

1. At a meeting of the Committee held no later than three years before the earliest effective date of the standard set forth in regulation D-2, the Committee shall undertake a review which includes a determination of whether appropriate technologies are available to achieve the standard, an assessment of the criteria in paragraph 2, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States. The Committee shall also undertake periodic reviews, as appropriate, to examine the applicable requirements for ships described in regulation B-3.1 as well as any other aspect of Ballast Water Management addressed in this Annex, including any Guidelines developed by the Organization.
2. Such reviews of appropriate technologies shall also take into account:
 1. safety considerations relating to the ship and the crew;
 2. environmental acceptability, i.e., not causing more or greater environmental impacts than they solve;
 3. practicability, i.e., compatibility with ship design and operations;
 4. cost effectiveness, i.e., economics; and
 5. biological effectiveness in terms of removing, or otherwise rendering not viable, Harmful Aquatic Organisms and Pathogens in Ballast Water.
3. The Committee may form a group or groups to conduct the review(s) described in paragraph 1. The Committee shall determine the composition, terms of reference and specific issues to be addressed by any such group formed. Such groups may develop and recommend proposals for amendment of this Annex for consideration by the Parties. Only Parties may participate in the formulation of recommendations and amendment decisions taken by the Committee.
4. If, based on the reviews described in this regulation, the Parties decide to adopt amendments to this Annex, such amendments shall be adopted and enter into force in accordance with the procedures contained in Article 19 of this Convention.

SECTION E - SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER MANAGEMENT

Regulation E-1 Surveys

1. Ships of 400 gross tonnage and above to which this Convention applies, excluding floating platforms, FSUs and FPSOs, shall be subject to surveys specified below:

1. An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Convention.
 2. A renewal survey at intervals specified by the Administration, but not exceeding five years, except where regulation E-5.2, E-5.5, E-5.6, or E-5.7 is applicable. This survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of this Convention.
 3. An intermediate survey within three months before or after the second Anniversary date or within three months before or after the third Anniversary date of the Certificate, which shall take the place of one of the annual surveys specified in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annex and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.
 4. An annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan required by regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.
 5. An additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with this Convention. The survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of this Convention. Such surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.
2. The Administration shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of this Convention are complied with.
 3. Surveys of ships for the purpose of enforcement of the provisions of this Convention shall be carried out by officers of the Administration. The Administration may, however, entrust the surveys either to surveyors nominated for the purpose or to organizations recognized by it.

4. An Administration nominating surveyors or recognizing organizations to conduct surveys, as described in paragraph 3 shall, as a minimum, empower such nominated surveyors or recognized organizations to:
 1. require a ship that they survey to comply with the provisions of this Convention; and
 2. carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.
5. The Administration shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations, for circulation to Parties for the information of their officers.
6. When the Administration, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under regulation E-2 or E-3 or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources such surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of the port State shall be notified immediately. When an officer of the Administration, a nominated surveyor, or a recognized organization has notified the appropriate authorities of the port State, the Government of the port State concerned shall give such officer, surveyor or organization any necessary assistance to carry out their obligations under this regulation, including any action described in Article 9.
7. Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Convention, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Administration, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by paragraph 1 is necessary. If the ship is in a port of another Party, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.
8. In every case, the Administration concerned shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.
9. The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Convention to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.

10. After any survey of the ship under paragraph 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by regulation B-1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.

Regulation E-2 Issuance or Endorsement of a Certificate

1. The Administration shall ensure that a ship to which regulation E-1 applies is issued a Certificate after successful completion of a survey conducted in accordance with regulation E-1. A Certificate issued under the authority of a Party shall be accepted by the other Parties and regarded for all purposes covered by this Convention as having the same validity as a Certificate issued by them.
2. Certificates shall be issued or endorsed either by the Administration or by any person or organization duly authorized by it. In every case, the Administration assumes full responsibility for the Certificate.

Regulation E-3 Issuance or Endorsement of a Certificate by Another Party

1. At the request of the Administration, another Party may cause a ship to be surveyed and, if satisfied that the provisions of this 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 this Annex.
2. A copy of the Certificate and a copy of the survey report shall be transmitted as soon as possible to the requesting Administration.
3. A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Administration and it shall have the same force and receive the same recognition as a Certificate issued by the Administration.
4. No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party.

Regulation E-4 Form of the Certificate

The Certificate shall be drawn up in the official language of the issuing Party, in the form set forth in Appendix I. If the language used is neither English, French nor Spanish, the text shall include a translation into one of these languages.

Regulation E-5 Duration and Validity of the Certificate

1. A Certificate shall be issued for a period specified by the Administration that shall not exceed five years.

2. For renewal surveys:

1. Notwithstanding the requirements of paragraph 1, when the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.
 2. When the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of expiry of the existing Certificate.
 3. When the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.
3. If a Certificate is issued for a period of less than five years, the Administration may extend the validity of the Certificate beyond the expiry date to the maximum period specified in paragraph 1, provided that the surveys referred to in regulation E-1.1.3 applicable when a Certificate is issued for a period of five years are carried out as appropriate.
 4. If a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the existing Certificate, the person or organization authorized by the Administration may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.
 5. If a ship at the time when the Certificate expires is not in a port in which it is to be surveyed, the Administration may extend the period of validity of the Certificate but this extension shall be granted only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and then only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.
 6. A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Administration for a period of grace of up to one month from the date of expiry stated on it. When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.
 7. In special circumstances, as determined by the Administration, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by

paragraph 2.2, 5 or 6 of this regulation. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.

8. If an annual survey is completed before the period specified in regulation E-1, then:
 1. the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
 2. the subsequent annual or intermediate survey required by regulation E-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;
 3. the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation E-1 are not exceeded.

9. A Certificate issued under regulation E-2 or E-3 shall cease to be valid in any of the following cases:
 1. if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Convention is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Annex;
 2. upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of regulation E-1. In the case of a transfer between Parties, if requested within three months after the transfer has taken place, the Party whose flag the ship was formerly entitled to fly shall, as soon as possible, transmit to the Administration copies of the Certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;
 3. if the relevant surveys are not completed within the periods specified under regulation E-1.1; or
 4. if the Certificate is not endorsed in accordance with regulation E-1.1.

APPENDIX I

FORM OF INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as "the Convention") the Bahamas Maritime Authority under the authority of the Government of The Commonwealth of The Bahamas.

Particulars of ship

Name of ship Distinctive
number or letters

Port of registry

Gross Tonnage

IMO number

Date of Construction

Ballast Water Capacity (in cubic metres)

Details of Ballast Water Management Method(s) Used

Method of Ballast Water Management used

Date installed (if applicable)

Name of manufacturer (if applicable)

The principal Ballast Water Management method(s) employed on this ship is/are:

in accordance with regulation D-1

in accordance with regulation D-2

(describe)

the ship is subject to regulation D-4

THIS IS TO CERTIFY:

1. That the ship has been surveyed in accordance with regulation E-1 of the Annex to the Convention; and
2. That the survey shows that Ballast Water Management on the ship complies with the Annex to the Convention.

This certificate is valid until subject to surveys in accordance with regulation E-1 of the Annex to the Convention. Completion date of the survey on which this certificate is based: dd/mm/yyyy

Issued at

.....

(Place of issue of certificate)

.....
(Date of issue)

.....
Signature of authorized official issuing the certificate)

(Seal or stamp of the authority, as appropriate)

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)

THIS IS TO CERTIFY that a survey required by regulation E-1 of the Annex to the Convention the ship was found to comply with the relevant provisions of the Convention:

Annual survey: Signed
(Signature of duly authorized official)

Place

Date.....

(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey*: Signed
(Signature of duly authorized official)

Place

Date.....

(Seal or stamp of the authority, as appropriate)

Annual*/Intermediate survey: Signed
(Signature of duly authorized official)

Place

Date.....

(Seal or stamp of the authority, as appropriate)

Annual survey: Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the authority, as appropriate)

ANNUAL/INTERMEDIATE SURVEY IN ACCORDANCE WITH REGULATION E-5.8.3

THIS IS TO CERTIFY that, at an annual/intermediate^{*} survey in accordance with regulation E-5.8.3 of the Annex to the Convention, the ship was found to comply with the relevant provisions of the Convention:

Signed
(Signature of authorized official)

Place

Date.....
(Seal or stamp of the authority, as appropriate)

ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID FOR LESS THAN 5 YEARS WHERE REGULATION E-5.3 APPLIES

The ship complies with the relevant provisions of the Convention, and this Certificate shall, in accordance with regulation E-5.3 of the Annex to the Convention, be accepted as valid until.....

Signed
(Signature of authorized official)

Place

Date.....
(Seal or stamp of the authority, as appropriate)

ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN COMPLETED AND REGULATION E-5.4 APPLIES

The ship complies with the relevant provisions of the Convention and this Certificate shall, in accordance with regulation E-5.4 of the Annex to the Convention, be accepted as valid until

Signed
(Signature of authorized official)

Place

Date.....
(Seal or stamp of the authority, as appropriate)

**ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE UNTIL
REACHING THE PORT OF SURVEY OR FOR A PERIOD OF GRACE WHERE
REGULATION E-5.5 OR E-5.6 APPLIES**

This Certificate shall, in accordance with regulation E-5.5 or E-5.6* of the Annex to the Convention, be accepted as valid until

Signed
(Signature of authorized official)

Place

Date.....

(Seal or stamp of the authority, as appropriate)

**ENDORSEMENT FOR ADVANCEMENT OF ANNIVERSARY DATE WHERE
REGULATION E-5.8 APPLIES**

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is

Signed
(Signature of authorized official)

Place

Date.....

(Seal or stamp of the authority, as appropriate)

In accordance with regulation E-5.8 of the Annex to the Convention the new Anniversary date is

Signed
(Signature of duly authorized official)

Place

Date.....

(Seal or stamp of the authority, as appropriate)

APPENDIX II

FORM OF BALLAST WATER RECORD BOOK

Period From: To:

Name of Ship

IMO number

Gross tonnage

Flag

Total Ballast Water capacity (in cubic metres)

The ship is provided with a Ballast Water Management plan Diagram of ship
indicating ballast tanks:

1. Introduction

In accordance with regulation B-2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

2. Ballast Water and Ballast Water Management

—Ballast Water“ means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines developed by the Organization.

3. Entries in the Ballast Water Record Book

Entries in the Ballast Water record book shall be made on each of the following occasions:

3.1 When Ballast Water is taken on board:

1. Date, time and location port or facility of uptake (port or lat/long),
depth if outside port
2. Estimated volume of uptake in cubic metres .3 Signature of the officer
in charge of the operation.

3.2 Whenever Ballast Water is circulated or treated for Ballast Water

Management purposes:

1. Date and time of operation 2.
2. Estimated volume circulated or treated (in cubic metres) 3.

3. Whether conducted in accordance with the Ballast Water Management plan

4. Signature of the officer in charge of the operation

3.3 When Ballast Water is discharged into the sea:

1. Date, time and location port or facility of discharge (port or lat/long)

2. Estimated volume discharged in cubic metres plus remaining volume in cubic metres

3. Whether approved Ballast Water Management plan had been implemented prior to discharge

4. Signature of the officer in charge of the operation.

3.4 When Ballast Water is discharged to a reception facility:

1. Date, time, and location of uptake

2. Date, time, and location of discharge

3. Port or facility

4. Estimated volume discharged or taken up, in cubic metres

5. Whether approved Ballast Water Management plan had been implemented prior to discharge

6. Signature of officer in charge of the operation

3.5 Accidental or other exceptional uptake or discharges of Ballast Water:

1. Date and time of occurrence

2. Port or position of the ship at time of occurrence

3. Estimated volume of Ballast Water discharged

4. Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks

5. Whether approved Ballast Water Management plan had been implemented prior to discharge

6 Signature of officer in charge of the operation

3.6 Additional operational procedure and general remarks.

4. Volume of Ballast Water

The volume of Ballast Water onboard should be estimated in cubic metres. The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation.

RECORD OF BALLAST WATER OPERATIONS

SAMPLE BALLAST WATER RECORD BOOK PAGE

Name of Ship:

Distinctive number or letters

Date	Item (number)	Record of operations/signature of officers in charge

Signature of Master.....