



IMO
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**AN ACT TO INCORPORATE THE
INTERNATIONAL CONVENTION FOR THE
CONTROL AND MANAGEMENT OF SHIPS'
BALLAST WATER AND SEDIMENTS, 2004,
INTO THE LAWS OF THE REPUBLIC OF
SURINAME**

**A Legislation Drafting Project submitted in partial fulfillment of the
requirements for the award of the Degree of Master of Laws (LL.M.) in
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CONTENTS

PAGE

Contents

1

Dedication

2 Acknowledgements

3

Explanatory note

1. Introduction

4

2. International response

7

3. Adoption of the Convention

10

3.1. Aims and purpose of the Convention

11

4. Main features of the Convention

12

5. The Regulations for the control and management of ships' ballast water

14

6. The need for the Ballast Water Management legislation for Suriname

19

7. The legal process of incorporating a treaty into the national legislation of

Suriname

22

ACCESSION ACT

25

INSTRUMENT OF ACCESSION

28

THE BALLAST WATER MANAGEMENT ACT

29

BIBLIOGRAPHY

39

ANNEXES

1. MARPOL Ratification Act (S.B. 1988 no. 69).
2. The International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

DEDICATION

²³ The steps of a [good] man are directed and established by the Lord when He delights in his way [and He busies Himself with every step].

²⁴ Though he falls, he shall not be utterly cast down, for the LORD grasps his hand in support and upholds him.

Psalm 37:23-24

This drafting project is dedicated to my Lord and Savior, Jesus Christ, for without him I am nothing. I give Him all the glory and I thank Him for his mercy and for all His blessings.

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Coming to Malta and leaving my family and friends behind was hard on me, but God being the good Lord He is, gave me the strength to study at the IMO Maritime Law Institute (IMLI). I glorify my Lord and Savior Jesus Christ. He has been my guidance and has showered many blessings on me.

I also thank my lovely wife Nicole and our daughter Chinyere for their understanding and love and for supporting me during my study at the IMLI.

I am eternally grateful to my parents and sisters and I hereby wish to thank them for their support and for never giving up on me.

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May the good Lord bless you all.

EXPLANATORY NOTE

1. INTRODUCTION

Ballast water is absolutely essential to the safe and efficient operation of modern shipping, providing balance and stability to un-laden ships. When a ship is empty of cargo, it fills its ballast tanks with water to maintain stability, trim and structural integrity. Water is much easier to load on and unload off a ship, and is therefore more efficient and economical than solid ballast. The ballast water is discharged when the ship loads cargo. A potentially serious environment problem arises when this ballast water contains marine life.

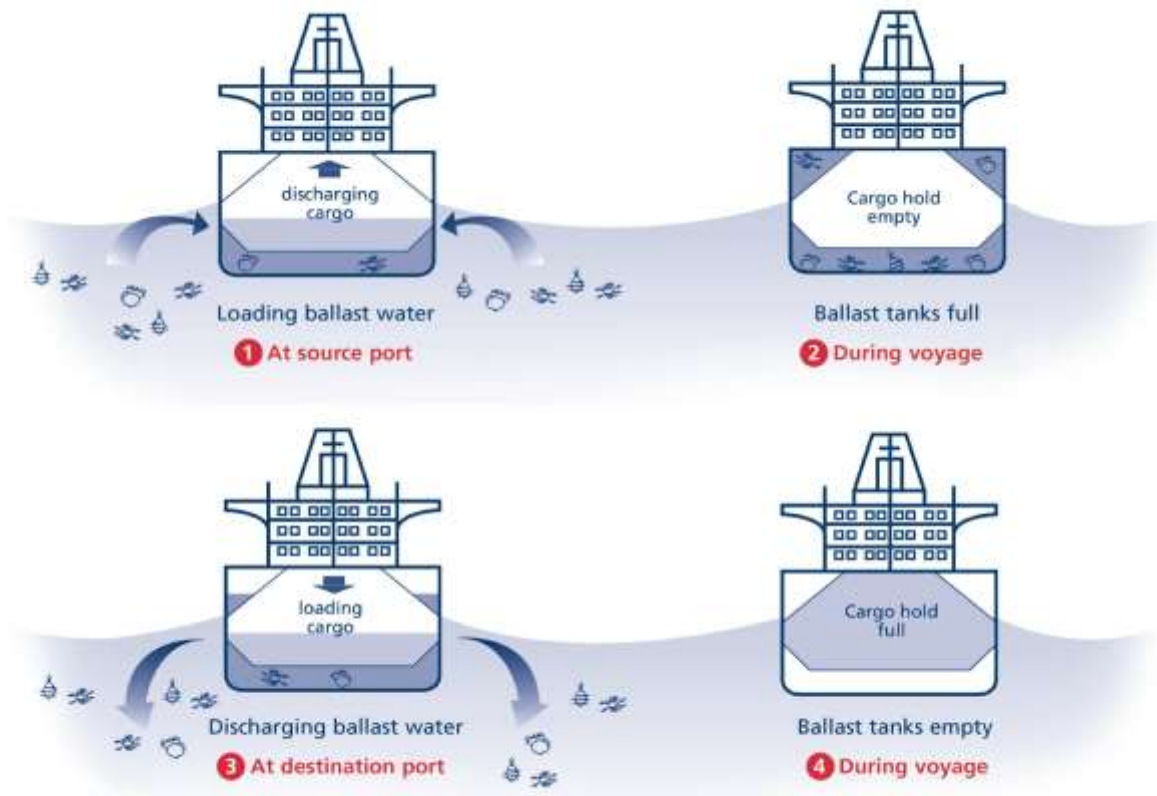


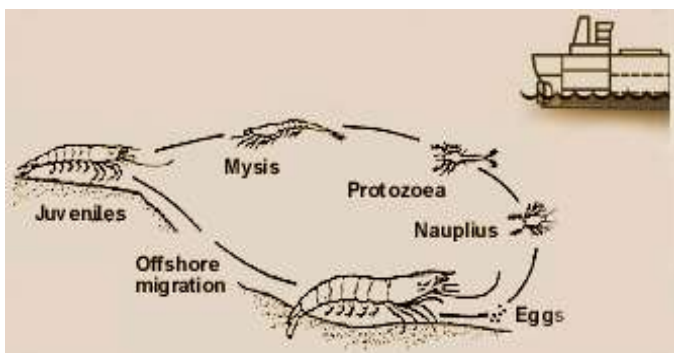
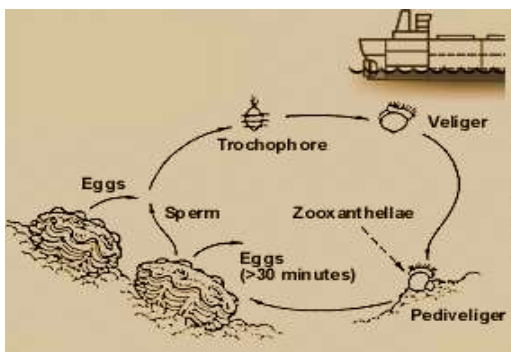
Figure 1: *The ballast water cycle (Source: GloBallast Programme, IMO).*¹

The introduction of invasive marine species into new environments by ships' ballast water, attached to ships' hulls or via other means has been identified as one of the four

¹ <http://globallast.imo.org/index.asp?page=problem.htm&menu=true>.

main threats to the world's oceans, and can cause extremely severe environmental, economic and public health impacts.² The other main threats to the world's oceans are: land-based sources of marine pollution, overexploitation of living marine resources and the physical alteration or destruction of marine habitat.³

Shipping is very important for the world economy and it is estimated that shipping moves over 80% of the world's commodities and transfers approximately three to five billion tonnes of ballast water internationally each year.⁴ Furthermore, it is estimated that more than 10,000 marine species each day may be transported across the oceans in the ballast water of ships and introduced into a non-native environment. These marine species include bacteria and other microbes, small invertebrates and the eggs, cysts and larvae of various species. The problem is compounded by the fact that virtually all marine species have life cycles that include a planktonic stage or stages. As ballast water may be fresh, brackish or saline, the coastal environment, estuaries and navigable inland waters, are most at risk.



Clam life cycle

Prawn life cycle

² <http://globallast.imo.org/index.asp>,

³ <http://globallast.imo.org/index.asp?page=problem.htm&menu=true>,

⁴ <http://globallast.imo.org/index.asp?page=problem.htm&menu=true>,

Figure 2: *Clam and prawn life cycles showing examples of planktonic stages that can be entrained when ship takes on ballast water (Source: GloBallast Programme, IMO).*⁵

With the expansion of volume and density of international shipping, the transfer of harmful aquatic species in ships' ballast water tanks has become the most significant pathway of unintentional introductions of invasive alien species into marine ecosystems. Apart from affecting ecosystems and contributing to the extinction of native species, and therefore representing a significant threat to biodiversity, invasive alien species may also cause major socio-economic damage.

⁵ <http://globallast.imo.org/index.asp?page=problem.htm&menu=true>,

2. THE INTERNATIONAL RESPONSE

Since the 1970s, various instruments of international law have addressed the problem of the transfer of aquatic organisms between marine environments in the context several issues.

Some of the most notable international instruments adopted to address the ballast water issue are, the Convention on Biological Diversity 1992⁶ (Biodiversity Convention or CBD)⁷ and the United Nations Convention on the Law of the Sea, 1982 (UNCLOS).⁸ Several binding agreements and non-binding codes of conduct and technical guidelines also gave rise to the risk of alien⁹ species transfer, first as health problem and secondly as an ecological and economic concern.¹⁰

The CBD defines *alien species* as one that “has been introduced outside its natural past or present distribution”, with an introduction being defined as “the movement by a human agency, either directly or indirectly, of an alien species outside its natural range. *Alien invasive species* (AIS), under the CBD, Article 2 is “an alien species which threatens ecosystems, habitats or species”.¹¹

UNCLOS, Article 196(1), adopted the term *alien* or *new species* comprising, in particular, those species which may cause “significant and harmful changes to a particular part of the marine environment. The inclusion of the term new species suggests that the obligation under Article 196 is not limited to identified pests or harmful organisms but also includes the broader introduction of nonindigenous or alien species that may cause significant changes in a marine ecosystem. The maritime sector introduced references to *harmful aquatic organisms* and *unwanted aquatic organisms*.¹²

⁶ The Text of the CBD was adopted in Rio de Janeiro on 5 June 1992.

⁷ See article 8(h). Available online at <http://www.cbd.int/convention/articles/?a=cbd-08>.

⁸ See article 196, Available online at http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf.

⁹ *Alien* means a species that is not native to an area.

¹⁰ Rolim, Maria Helena; *The International Law on Ballast Water: Preventing Biopollution*, Martinus Nijhoff Publishers, Leiden, Netherlands, 2008, p. 2.

¹¹ *Ibid.* at p. 10.

¹² *Ibid.* at p. 11.

Canada and Australia were among the first countries to experience particular problems with harmful aquatic species, and they brought their concerns to the attention of the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO).¹³

In response to the threats posed by these invasive marine species, the United Nations Conference on Environment and Development (UNCED), held in Rio de Janeiro in 1992, in its Agenda 21 called on the IMO and other international bodies to take further action to address the transfer of harmful organisms by ships.¹⁴

Several guidelines for the control and management of ships ballast water, developed by the IMO to minimize the transfer of harmful aquatic organisms and pathogens¹⁵ were adopted by countries.¹⁶

These guidelines recommended the following measures regarding the management and control of ships ballast water:

- Minimizing 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, when bottom-dwelling organisms may rise in the water column.
- Cleaning ballast tanks and removing mud and sediments that accumulated in the ballast tanks or which may contain harmful organisms.
- Avoiding unnecessary discharge of ballast water.
- Undertaking of ballast water management procedures, including exchanging ballast water at sea; non-release or minimal release of ballast water; and discharge to onshore reception and treatment facilities.¹⁷

¹³ <http://www.imo.org/ourwork/environment/ballastwatermanagement/Pages/Default.aspx>.

¹⁴ http://globallast.imo.org/index.asp?page=internat_response.htm&menu=true.

¹⁵ Article 1(1) of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004. 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.

¹⁶ IMO Assembly Resolutions A.774(18) adopted in 1993 and A.868(20) adopted in 1997, for the purpose of addressing the transfer of Harmful Aquatic Organisms and Pathogens.

¹⁷ <http://globallast.imo.org/resolution.htm>.

The World Summit on Sustainable Development (WSSD) held in Johannesburg, South Africa 2002 reaffirmed its commitment to Agenda 21 and in paragraph 34(b) of its Plan of Implementation, called for action at all levels to accelerate the development of measures to address invasive alien species in ballast water.¹⁸

3. ADOPTION OF THE BALLAST WATER MANAGEMENT CONVENTION

¹⁸ Preamble to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

The International Convention for the Control and Management of Ships' Ballast Water and Sediments (Ballast Water Management Convention or Convention) was adopted by consensus at a Diplomatic Conference at IMO in London on 13 February 2004.

The Convention shall enter into force twelve months after the date on which not less than 30 States, the combined merchant fleets of which constitute not less than 35 percent of the gross tonnage of the world's merchant shipping, have either signed it without reservation as to ratification, acceptance or approval, or have deposited the requisite instrument of ratification, acceptance, approval or accession in accordance with Article 17.¹⁹ The Convention has not yet entered in force. As of 14 January 2012, thirty three States are party to the Convention, representing 26,46 per cent of the world tonnage²⁰ thus not meeting the criteria for its entry into force.

The Conference was attended by representatives of 74 States, one Associate Member of IMO; and observers from two intergovernmental organizations and 18 non-governmental international organizations.

The Conference also adopted four Resolutions:

- Conference Resolution 1: Future work by the Organization pertaining to the Convention;
- Conference Resolution 2: The use of decision-making tools when reviewing the standards pursuant to Regulation D-5;
- Conference Resolution 3: Promotion of technical co-operation and assistance;
- Conference Resolution 4: Review of the Annex to the Convention.

3.1 AIMS AND OBJECTIVES OF THE CONVENTION

The Convention aims to prevent the potentially devastating effects of the spread of

¹⁹ Article 18 of the Convention.

²⁰ <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>.

harmful aquatic organisms carried by ships' ballast water from one region to another. Parties undertake to give full and complete effect to the provisions of this Convention and the Annex thereto in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships ballast water and sediments.²¹

The Convention requires ships, to which it applies, to implement a ballast water management plan. All ships will have to carry a ballast water record book and will be required to carry out ballast water management procedures to a given standard. Existing ships will be required to do the same, but after a phase-in period.²²

The Convention is divided into 22 Articles and an Annex. The Annex forms an integral part of the Convention and unless expressly provided otherwise, a reference made to the Convention also constitutes at the same time, a reference to the Annex. The Annex to the Convention contains the regulations for the control and management of ships' ballast water and sediments.

4. THE MAIN FEATURES OF THE CONVENTION

Article 2(1) of the Convention states that Parties undertake to give full and complete effect to the provisions of the Convention and the Annex, in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments.

²¹ Article 2 of the Convention.

²² [http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-\(BWM\).aspx](http://www.imo.org/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Control-and-Management-of-Ships%27-Ballast-Water-and-Sediments-(BWM).aspx).

Under paragraph 3 and 6 of Article 2 Parties can take, individually or jointly with other Parties, more stringent measures with respect to the prevention, reduction or elimination of the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments, consistent with international law. Parties should ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States.

Parties must also ensure that ships to which the Convention applies and which are entitled to fly its flag or which are operating under its authority, comply with the requirements set forth in the Convention, including the applicable standards and requirements in the Annex. Parties shall take effective measures to ensure that these ships comply with the respective requirements.

Each Party shall, with due regard to its particular conditions and capabilities, develop national policies, strategies or programmes for ballast water management in its ports and waters under its jurisdiction that accord with, and promote the attainment of the objectives of the Convention.²³

Under article 5 Parties have the obligation to ensure that ports and terminals where cleaning or repair of ballast tanks occur or take place, have adequate reception facilities for the reception of sediments.

In light of scientific and technical research and monitoring, Parties shall individually or jointly promote and facilitate scientific and technical research on ballast water management and they shall also monitor the effects of ballast water management in waters under their jurisdiction.²⁴

Ships to which the Convention applies, are required to be surveyed and certified²⁵ and may be inspected by port State control officers²⁶ who can verify that the ship has a valid

²³ Article 4 of the Convention.

²⁴ Article 6 of the Convention.

²⁵ Article 7 of the Convention.

²⁶ Article 9 of the Convention.

certificate; inspect the ballast water record book; and/or sample the ballast water. If there are concerns, then a detailed inspection may be carried out and “the Party carrying out the inspection shall take such steps as will ensure that the ship shall not discharge ballast water until it can do so without presenting a threat of harm to the environment, human health, property or resources”. Under article 8 and 10, respectively, all Parties must punish violations of the Convention through appropriate sanctions and cooperate in the detection of violations and in enforcement of the Convention provisions.

All possible efforts shall be made to avoid a ship being unduly detained or delayed.²⁷

Under Article 13 relating to technical assistance, co-operation and regional co-operation, Parties undertake, directly or through the IMO 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 IMO related thereto.

5. THE REGULATIONS FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER

The Regulations for the control and management of ships' ballast water and sediments are attached as an Annex to the Convention. These Regulations are divided in five different head sections.

²⁷ Article 12 of the Convention.

Section A covers the general provisions which are subdivided under: definitions²⁸, application²⁹, exceptions³⁰, exemptions³¹ and the equivalent compliance.³² Regulation A-2 General Applicability states: “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.”

Section B contains the regulations which deal with the Management and Control Requirements for Ships. Ships are required to have on board and implement a ballast water management plan approved by the Administration.³³ The ballast water management plan is a plan that is specific to each ship and it includes a detailed description of all the actions to be taken in order to implement the ballast water management requirements and supplemental ballast water management practices.

Under Regulation B-2 ships are required to have a ballast water record book in order to record when ballast water is taken on board, circulated or treated for ballast water management purposes or when ballast water is discharged into the sea. It should also record when ballast water is discharged to a reception facility and any accidental or other exceptional discharges of ballast water

The specific requirements for ballast water management are contained in regulation B-3 which deals with the ballast water management for ships as follows:

- Ships constructed before 2009 with a ballast water capacity of between 1500 and 5000 cubic meters must conduct ballast water management that at least meets 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.
- 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

²⁸ Regulation A-1.

²⁹ Regulation A-2.

³⁰ Regulation A-3.

³¹ Regulation A-4.

³² Regulation A-5.

³³ Regulation B-1.

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.

- Ships constructed in or after 2009 with a ballast water capacity of less than 5000 cubic meters must conduct ballast water management that at least meets the ballast water performance standard.
- 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 ballast water performance standard.
- 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.

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

All ships using ballast water exchange should:

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

When these requirements cannot be met, areas may be designated where ships can conduct ballast water exchange. All ships shall remove and dispose of sediments from spaces designated to carry ballast water in accordance with the provisions of the ships' ballast water management plan.³⁴

³⁴ Regulation B-4.

Section C contains regulations which relate to special requirements in certain areas. A Party, individually or jointly with other Parties, may impose on ships additional measures to prevent, reduce, or eliminate the transfer of harmful aquatic organisms and pathogens through ships' ballast water and sediments. Parties should consult with adjoining or nearby States that may be affected by such standards or requirements and should communicate their intention to establish additional measure(s) to the Organization at least six months, except in emergency or epidemic situations, prior to the projected date of implementation of the measure(s). When appropriate, Parties shall have to obtain the approval of the IMO.³⁵

Section D deals with the standards for ballast water management. The ballast water exchange standard is put under Regulation D-1 and Regulation D-2 deals with the ballast water performance standard. Ballast water exchange should be used to meet the following performance standards:

- Ships performing ballast water exchange shall do so with an efficiency of 95 per cent volumetric exchange of Ballast Water. For ships exchanging ballast water by the pumping-through method, pumping through three times the volume of each ballast water tank shall be considered to meet the standard described. Pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met.³⁶
- Ships conducting ballast water management shall 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 milliliter less than 50 micrometers in minimum dimension and greater than or equal to 10 micrometers in minimum dimension; and discharge of the indicator microbes shall not exceed the specified concentrations.³⁷

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

- a. Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming

³⁵ Regulation C-1.

³⁶ Regulation D-1.

³⁷ Regulation D-2.

- unit (cfu) per 100 milliliters or less than 1 cfu per 1 gram (wet weight) zooplankton samples;
- b. *Escherichia coli* less than 250 cfu per 100 milliliters;
 - c. Intestinal Enterococci less than 100 cfu per 100 milliliters.³⁸

Ballast water management systems must be approved by the Administration³⁹ in accordance with the IMO guidelines.⁴⁰ These include systems which make use of chemicals or biocides; make use of organisms or biological mechanisms; or which alter the chemical or physical characteristics of the ballast water.

Regulation D-4 covers the prototype ballast water treatment technologies and it allows for ships participating in a programme approved by the Administration to test and evaluate promising ballast water treatment technologies to have a leeway of five years before having to comply with the requirements.

The MEPC is required to review the ballast water performance standard, taking into account a number of criteria including safety considerations; environmental acceptability, i.e., not causing more or greater environmental impacts than it solves; practicability, i.e., compatibility with ship design and operations; cost effectiveness; and biological effectiveness in terms of removing, or otherwise rendering inactive harmful aquatic organisms and pathogens in ballast water.⁴¹ The review should include a determination of whether appropriate technologies are available to achieve the standard, an assessment of the above mentioned criteria, and an assessment of the socio-economic effect(s) specifically in relation to the developmental needs of developing countries, particularly small island developing States.

³⁸ Regulation D-2(2).

³⁹ Article 1(1) of the Convention. "Administration" means the Government of the State under whose authority the ship is operating. With respect to a ship entitled to fly a flag of any State, the Administration is the Government of that State. With respect to floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purposes of exploration and exploitation of its natural resources, including Floating Storage Units (FSUs) and Floating Production Storage and Offloading Units (FPSOs), the Administration is the Government of the coastal State concerned.

⁴⁰ Regulation D-3.

⁴¹ Regulation D-5.

Section E deals with the survey and certification requirements for ballast water management and consists of five Regulations namely surveys⁴², issuance or endorsement of a certificate⁴³, issuance or endorsement of a certificate by another Party⁴⁴, form of the certificate⁴⁵ and duration and validity of the certificate⁴⁶. These regulations establish the requirements for initial renewal, annual, intermediate and renewal surveys and certification requirements.

The Convention has two appendices. Appendix 1 is the standard form of a Ballast Water Management Certificate and appendix 2 is the standard form of a Ballast Water Record Book.

6. THE NEED FOR THE BALLAST WATER MANAGEMENT LEGISLATION FOR SURINAME

Suriname is Party to the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) and to the following IMO conventions:

- The Convention on the International Maritime Organization.

⁴² Regulation E-1.

⁴³ Regulation E-2.

⁴⁴ Regulation E-3.

⁴⁵ Regulation E-4.

⁴⁶ Regulation E-5.

- The Convention on Facilitation of International Maritime Traffic, 1965, as amended.
- The International Convention on Load Lines, 1966.
- The International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969.
- The International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto.
- The International Convention for the Safety of Life at Sea, 1974, as amended.
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as amended.
- The 1996 Protocol to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

Most of these Conventions deal with the safety and security of navigation or with pollution prevention. The Ballast Water Management Convention is the first specific regulatory regime on biopollution through ballast water and it expands essential principles, rights and obligations with respect to the protection of the marine environment, especially those in UNCLOS, in particular, Article 196(1),⁴⁷ and in Article 8(h) of the CBD.⁴⁸

At present there is no law or legislation, governing the effective control and management of ballast water and sediments. Article 17 of the Port Law 1981 (S.B. 1981 no. 86) forbids the disposal of ballast, ballast water and oily bilge water into the Surinamese public waters, but in order to effectively control and manage the introduction of harmful aquatic organisms and pathogens through ships it is necessary to have an up to date, complete and comprehensive Ballast Water Management Act.

⁴⁷ The Preamble to the BWM Convention, recalls Article 196(1) of the UNCLOS, which provides: States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction or control, or the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment, which may cause significant and harmful changes thereto. This general obligation, addressed to the port, coastal and flag States in regard to the protection of the marine environment, is the pillar of the BWM Convention which adopted the teleology of the UNCLOS, particularly Part XII on the protection and preservation of the marine environment. Rolim, Maria Helena; p. 99.

⁴⁸ Suriname is a Party since 12 January 1996.

The accession⁴⁹ and incorporation of the Convention into national legislation will enable Suriname to prevent, minimize and ultimately eliminate the risks of introduction of harmful aquatic organisms and pathogens through ships entering its ports through the control and management of ships' ballast water and sediments.

Suriname is a port and a coastal State with many ships engaged in international voyages calling at its ports. It is therefore important that Suriname takes all the necessary steps to protect its marine environment and economy. Some of the common and expected problems and difficulties that can occur if invasive marine species are introduced into the Surinamese waters are:

- Reductions in fisheries production (including collapse of the fishery) due to competition, predation and/or displacement of the fishery species by the invading species, and/or through habitat/environmental changes caused by the invading species.
- Impacts on aquaculture (including closure of fish-farms).
- Physical impacts on coastal infrastructure, facilities and industry, especially by fouling species.
- Reduction in the economy and efficiency of shipping due to fouling species.
- Impacts and even closure of recreational and tourism beaches and other coastal amenity sites due to invasive species (e.g. physical fouling of beaches).
- Secondary economic impacts from human health impacts of introduced pathogens and toxic species, including increased monitoring, testing, diagnostic and treatment costs, and loss of social productivity due to illness and even death in affected persons.
- Secondary economic impacts from ecological impacts and bio-diversity loss.
- The costs of responding to the problem, including research and development, monitoring, education, communication, regulation, compliance, management, mitigation and control costs.

⁴⁹ Article 17(1) of the Convention. "This Convention shall be open for signature by any State at the Headquarters of the Organization from 1 June 2004 to 31 May 2005 and shall thereafter remain open for accession by any State".

Although the Convention has not yet entered into force it is strongly recommended that the Government of Suriname takes the necessary preventive steps to protect its national interests by enacting legislation incorporating provisions of the Convention into the national laws of the Republic of Suriname. In this regard reference should also be made to Article 192 of the UNCLOS wherein is stipulated that States have the obligation to protect and preserve the marine environment.

7. THE LEGAL PROCESS OF INCORPORATING A TREATY INTO THE NATIONAL LEGISLATION OF SURINAME

The Constitution of the Suriname provides that the Legislative Power shall be exercised jointly by the National Assembly and the Government.⁵⁰

⁵⁰ Article 70 Constitution of the Republic of Suriname (S.B. 1978 no. 116), as amended by S.B. 1992 no. 38.

The President introduces the proposals of law or other Government proposals before The National Assembly in a written message.

Public debate on any received Government proposal shall always be preceded by an examination of that proposal. The National Assembly shall determine in its Rules of Order the manner in which such examination shall be made.⁵¹

In accordance with article 103, agreements with other powers and with organizations based on international law shall be concluded by, or by authority of, the President and shall be, insofar as the agreements require, ratified by the President. These agreements shall be communicated to The National Assembly as soon as possible; they shall not be ratified or acceded to, and they shall not enter into force until they have received the approval of the National Assembly.

With regard to the approval referred to in Article 103, Article 104 states the following:

(1) Approval shall be given either explicitly or implicitly. Explicit agreement shall be given by an act.⁵² Implicit approval has been given if, within thirty days after the agreement has been submitted for that purpose to the National Assembly, and no statement has been made by the National Assembly expressing its wish that the agreement be subject to its explicit approval.

(2) The law determines the cases in which no approval is required.

Upon the National Assembly's approval the relevant department or agency of a Ministry prepares the draft legislation (Act) implementing the provisions/regulations of the Treaty in the national legislation. The Ministry responsible for the subject matter prepares a memorandum setting out the main points the legislation proposes.

This draft is reviewed by the legislative department of the Ministry of Justice and Police. If there are no comments, the draft is sent to the Council of State which advises the President for the execution of his office as Head of State and as Head of the

⁵¹ Ibid. article 75.

⁵² As an example a copy of such a relevant Act is attached in annex B to this legislative project.

Government. The said Council also advises the Government on general policy matters and on the content and the constitutionality of proposals of law as well as agreements under public international law for which the consent of the National Assembly is required.⁵³

Once the draft is approved by the Cabinet, after advice from the Council of State, with or without amendments, the Cabinet will authorize the relevant Minister to submit the draft to the Parliament for approval. After the Parliament has approved the draft, the President will endorse the Act and it will be published in the National Gazette of the Republic of Suriname. Only upon publication in the National Gazette of the Republic of Suriname, the Act will have force of law.

The Act then comes into operation on the date of assent unless another date of commencement is stipulated in the Act itself. The same procedure will be followed for the accession and incorporation of the Convention. Upon approval of the National Assembly on the accession of the Suriname to the Convention, the Ministry of Transport will prepare the draft of the Ballast Water Management Act. The objective of the Ballast Water Management Act is to incorporate the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 into the domestic legislation of the Republic of Suriname. Through this Act the Convention however, is also given force of law in its entirety.

In Suriname, the Maritime Authority Suriname (MAS) is the governmental agency responsible to guarantee the safe and efficient passage (transit) of sea vessels to and from Suriname on the basis of international standard norms and regulations and in accordance with the ratified instruments by Suriname. The MAS is also responsible for ensuring that the relevant laws concerning shipping and shipping traffic are being implemented.⁵⁴ With regard to the aforementioned it is also an objective of the Act to charge the maritime affairs to the MAS as the Competent Authority and to empower the same and its Director with the respective enforcement duties.

⁵³ Article 115 (c), (d)

⁵⁴ Article 3 of the Maritime Authority Suriname Act (S.B. 1998 no. 37).

Port State Control is one of the main responsibilities of the MAS and in that regard this Act will vest the Port State Control Officers with the authority to conduct the ballast water sampling and to take the relevant measures in accordance with this Act in order to protect the marine environment and national interests of Suriname in case of a potential ballast water disaster.



**LAW GAZETTE
OF THE
REPUBLIC OF SURINAME**

Law of XXXX 2012, approving the accession of the Republic of Suriname to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

THE PRESIDENT OF THE REPUBLIC OF SURINAME,

Taking into consideration that in order to accede to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, adopted in London, England on the thirteenth day of February, two thousand and four, it is obligatory to receive the express approval of the National Assembly, which approval under Article 104 (1) of the Constitution of the Republic of Suriname, must be granted by law;

Having consulted the State Council; and

Having received the approval of the National Assembly

PROMULGATES THE FOLLOWING LAW

Article 1

The Accession to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, adopted in London, England on the thirteenth day of February, two thousand and four, is approved.

Article 2

This Act shall come into force on the day of its publication in the Law Gazette of the Republic of Suriname.

Done in Paramaribo, on XXXX, 2012

(Signature)

President of the Republic of Suriname,
D.D. BOUTERSE

Law of XXXX 2012, approving the accession of the Republic of Suriname to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

EXPLANATORY NOTE

By acceding to and incorporating the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004 (Convention), into its national legislation, the Republic of Suriname will be able to prevent, minimize and ultimately eliminate the risks of introduction of Harmful Aquatic Organisms and Pathogens through ships, entering at Surinamese ports through the control and management of ships ballast water and sediments.

The Convention embodies a specific regulatory regime on biopollution through ballast water and it expands essential principles, rights and obligations with respect to the protection of the marine environment.

The objective of the Convention is to prevent the potentially devastating effects of the spread of harmful aquatic organisms carried by ships' ballast water from one region to another.

Now that the National Assembly has indicated its desire that the accession to this Convention shall be subject to its express approval, the present bill is necessary, to comply with the provisions of Article 104 (1) of the Constitution of the Republic of Suriname.

(signature)

President of the Republic of Suriname,

D.D. BOUTERSE

INSTRUMENT OF ACCESSION

WHEREAS the International Convention for the Control and Management of Ships' Ballast Water and Sediments was adopted at London on the thirteenth day of February, two thousand and four.

NOW THEREFORE I, Mr. Winston Lackin, Minister for Foreign Affairs, declare that the Government of Suriname,

HAVING CONSIDERED the above mentioned Convention, accedes to the same and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS WHEREOF, I have signed this instrument of accession at Paramaribo, Suriname on [date].

[Signature]

Minister for Foreign Affairs



LAW GAZETTE
OF THE
REPUBLIC OF SURINAME
DRAFT

Law of XXXX 2012, incorporating the provisions of the International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004 (BALLAST WATER MANAGEMENT ACT)

THE PRESIDENT OF THE REPUBLIC OF SURINAME,

Taking into consideration that it is desirable to enact rules for the management and treatment of ballast water to prevent the introduction of harmful aquatic organisms and pathogens into Surinamese waters;

Having consulted the State Council; and

Having received the approval of The National Assembly promulgates the following law.

FORCE OF LAW

Regulation 1

1. As from the commencement of this Act, the International Convention for the Control and Management of Ships' Ballast Water and Sediments 2004, together with its Annex and appendices thereto, shall have the force of law.
2. The Annex forms an integral part of the Convention. Unless expressly provided otherwise, a reference to the Convention constitutes at the same time a reference to the Annex.
3. The Convention together with its Annex and appendices thereto, is attached herewith as Schedule 1.

DEFINITIONS

Regulation 2

For the purpose of this Act, the following definitions shall apply:

- a. Administration: the Maritime Authority Suriname (MAS), established in accordance with the Law SB 1998 no. 37.
- b. Authorized officers: the Director and principal surveyor of the Administration including:
 - (a) Every surveyor and other persons empowered by the Director to undertake surveys and inspections of vessels in accordance with this Act;
 - (b) Other officers of the Administration appointed by the Director to enforce this Act; and
 - (c) Other persons to whom the Director has delegated powers to enforce the provisions of this Act.
- c. Ballast water: includes water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship.
- d. Ballast Water Management: the 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.
- e. Ballast Water Management Convention or Convention: the International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004.
- f. Certificate: the international ballast water management certificate.
- g. Company: 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, adopted by the Organization by Resolution A.741(18), as amended.
- h. Director: the Director of the Administration.

- i. Harmful aquatic organisms and pathogens: the 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.
- j. Minister: the Minister responsible for transport affairs.
- k. Organization: the International Maritime Organization.
- l. Sediments: the matter settled out of ballast water within a ship.
- m. Ship: a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, floating storage units (FTUs) and floating production, storage and off-loading units (FPSOs).
- n. Surinamese waters: the internal waters, the territorial sea and the waters of the economic zone, as provided for by the Law S.B. 1978 no. 26.

APPLICATION

Regulation 3

- 1. This Act shall apply to:
 - a. Ships flying the flag of Suriname;
 - b. Ships not flying the flag of Suriname but which operate under the authority of Suriname;
 - c. Every foreign ship calling at the ports or offshore terminals of Suriname.

- 2. This Act does not apply to:
 - a. Ships not designed or constructed to carry ballast water;
 - b. Ships registered in Suriname which only operate in Surinamese waters, unless the Administration determines that the discharge of ballast water from such ships would impair or damage the environment, human health, property or resources of Suriname;
 - c. Ships of a foreign State which only operate in waters under the jurisdiction of another State, subject to the authorization of the latter State for such exclusion.
 - d. Ships which only operate in waters under the jurisdiction of one State and on the high seas, except for ships not granted an authorization pursuant to sub-paragraph (c), unless the Administration determines that the discharge of ballast water from

- such ships would impair or damage their environment, human health, property or resources, or those of adjacent of other States;
- e. Any warship, naval auxiliary or other ship owned or operated by a State and used, for the time being, only on government non-commercial service.
 - f. Permanent ballast water in sealed tanks on ships that is not subject to discharge.

Regulation 4

Except where expressly provided otherwise, the discharge of ballast water and sediments shall only be conducted through ballast water management in accordance with the provisions of Schedule 1.

COMPETENT AUTHORITY

Regulation 5

1. The Administration, as the competent authority, is responsible for the enforcement this Act.
2. The relevant environmental authority, authorized by the Director, shall:
 - a. Use all available infrastructure and research to monitor the effects of ballast water management in Surinamese waters. Such research and monitoring should include observation, measurement, sampling, evaluation and analysis of the adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships Ballast Water.
 - b. Report to the Director annually on the state of the monitoring performed.

RESPONSIBILITIES OF THE ADMINISTRATION

Regulation 6

1. Each ship shall have on board and implement a ballast water management plan in accordance with Regulation B-1 of Schedule 1.

2. Such a plan shall be approved by the Administration taking into account Guidelines developed by the Organization.

Regulation 7

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 of Schedule 1.
2. Ballast Water record book entries shall be maintained on board a 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.

Regulation 8

A ship to which this Act applies, may be subject to inspection by authorized officers for the purpose of determining whether the ship is in compliance with this Act.

Regulation 9

1. The inspection as provided in regulation 8 shall include:
 - a. Verification that there is a valid certificate onboard the ship, which, if valid shall be accepted; and
 - b. Inspection of the ballast water record book, and/or
 - c. Taking of a sampling of the ships ballast water, carried out in accordance with the standard guidelines developed by the Organization.
2. When carrying out inspections on a ship flying the flag of a State which is not a party to the Convention, the authorized officer shall ensure that the treatment given to such a ship and its crew is no more favourable than that given to a ship flying a flag of a State which is a party to the Convention
3. All inspections shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

Regulation 10

1. The Administration shall ensure that all Surinamese vessels of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPSOs, undergo surveys and are issued certificates in accordance with schedule 1.
2. After any survey of the ship under paragraph 1 has been completed by the Administration, it is not permitted to make changes in the structure, any equipment, fittings, arrangements or material associated with the ballast water management plan required by regulation B-1 of schedule 1 and covered by the survey without the sanction of the Administration, except the direct replacement of such equipment or fittings.
3. The condition of the ship and its equipment, systems and processes shall at all times be maintained to conform with the provisions of this Act 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.

WARNINGS CONCERNING BALLAST WATER UPTAKE IN CERTAIN AREAS

Regulation 11

1. The Administration shall take necessary measures to notify mariners of areas in Surinamese waters, where ships should not uptake Ballast Water due to known conditions. The Administration 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.
2. Warnings may be issued for areas:
 - a. 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;
 - b. near sewage outfalls; or
 - c. where tidal flushing is poor or times during which a tidal stream is known to be more turbid.

3. In addition to notifying mariners of areas in accordance with the provisions of paragraph 1, the Administration 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 Administration shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

CONTROL AND MANAGEMENT OF SHIP'S BALLAST WATER AND SEDIMENTS

Regulation 12

1. Ships performing ballast water exchange in accordance with this Act shall do so with an efficiency of at least 95 percent volumetric exchange of ballast water.
2. Notwithstanding paragraph 1 of this regulation, a ship conducting ballast water exchange shall:
 - a. whenever possible, conduct such ballast water exchange at least 200 nautical miles from the nearest land and in water at least 200 meters in depth, taking into account the guidelines developed by the Organization;
 - b. in cases where the ship is unable to conduct ballast water exchange in accordance with paragraph 2(a), such ballast water exchange shall be conducted taking into account the respective guidelines of the Organization 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 meters in depth.
 - c. In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph 2(a) or (b), the Administration may designate areas, in consultation with adjacent or other States, as appropriate,

where a ship may conduct ballast water exchange, taking into account the respective guidelines of the Organization.

- d. 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 of this regulation.
- e. A ship conducting ballast water exchange shall not be required to comply with paragraphs 1 or 2 of this regulation, 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.
- f. 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.

SEDIMENT REMOVAL

Regulation 13

All ships shall remove and dispose of Sediments from spaces designated to carry ballast water in accordance with the provisions of the ships' ballast water management plan.

Regulation 14

1. Removal and disposal of sediments and the cleaning or repairing of ships ballast tanks shall only be done at the facilities recognized and approved by the Administration.
2. The facilities as provided in paragraph 1 will be adequate for performing tasks in accordance with the minimum standards and guidelines of the Organization.
3. The Administration shall inspect and certify such facilities annually.

SANCTIONS

Regulation 15

1. The master of a ship who violates the provisions stipulated in the regulations 4, 12, 13 and 14 (1) shall be liable to a fine as stipulated in the seventh category of the General Fines Law⁵⁵ or to imprisonment for a maximum period of 1 (one) year, or both.
2. The master of a ship who does not fully cooperate in accordance with regulation 8 or who provides false information, shall be liable to a fine as stipulated in the sixth category of the General Fines Law or to liable to imprisonment for a maximum period of 6 (six) months, or both.
3. The violations referred to in paragraphs 1 and 2 are criminal offences.
4. The master of a ship which does not have a valid certificate or a ballast water record book commits a criminal offence and is liable to a fine as stipulated in the fifth category of the General Fines Law.
5. For the purposes of this Act, any action may be brought before the relevant District Court.

FINAL PROVISIONS

Regulation 16

1. All regulations of this Act, except regulation 15, may be amended by State order.
2. The Minister may enact further subsidiary legislation for the implementation of this Act.

TITLE AND COMMENCEMENT

⁵⁵ Algemene Geldboete Wet SB 2002, no 73.

Regulation 17

1. This Act shall be cited as the Ballast Water Management Act.
2. This Act shall be published in the Law Gazette of the Republic of Suriname.
3. This Act will come into force the following day of its publication.

Done in Paramaribo, on XXXX, 2012

(Signature)

President of the Republic of Suriname,

D.D. BOUTERSE

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Conventions:

- The Convention on Biological Diversity 1992.
- The International Convention for the Control and Management of Ships Ballast Water and Sediments, 2004.
- The United Nations Convention on the Law of the Sea, 1982.

⁵⁶ All website references correct as at 8 April 2012.