

**A BILL
ENTITLED**

AN ACT to Provide for the regulation and management of ships' ballast water, to incorporate the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, and for connected purposes.

BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica and with the authority of the same, as follows:-

PART I. Preliminary

- Short title.** 1. This Act may be cited as the Ballast Water Management Act, 2011.
- Interpretation.** 2. - (1) In this Act –
- “adequate” means, in relation to Sediment reception facilities for sediments from ships, adequate to receive sediments from ships using the port or terminal in question without causing undue delay to, and according to the needs of, those ships;
- “Authority” means the Maritime Authority established under section 6 of the *Shipping Act*;
- “Annex” means the Annex to the Convention;
- “Ballast Water Management” means mechanical, physical, chemical and biological processes, either singularly or in combination, to remove, render harmless or to avoid the uptake or discharge of harmful aquatic organisms and pathogens within ships ballast water and sediments;
- “certificate” means the International Ballast Water Management certificate specified in the Convention;
- “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;
- “Convention” means the International Convention for the Control and

Management of Ships' Ballast Water and Sediments, 2004;

"Director" means the Director General of the Maritime Authority;

"Jamaican waters" means any waters in which Jamaica has jurisdiction in respect of the protection and preservation of the marine environment under international law;

"FPSO" means a floating production, storage and off-loading vessel;

"FSO" means a floating and offloading unit;

"Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969 as amended, or any successor Convention;

"Guidelines" means the Guidelines for the Control and Management of Ships' Ballast Water to Minimize the Transfer of Harmful Aquatic Organisms and Pathogens, IMO Assembly Resolution A. 869(20);

"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;

"IMO" means the International Maritime Organization;

"Merchant Shipping Notice" means a notice entitled as such published by the Director, and includes any amendment which he considers relevant from time to time;

"Organization" means IMO;

"Party" means a State which is a Party to the Convention;

"pleasure craft" means a ship, however propelled, that is used exclusively for pleasure and does not carry passengers or cargo for hire or reward, but does not include a vessel that is provided for the transport or entertainment of lodgers at any institution, hotel, boarding house, guest house or other establishment;

"Sediments" means matters settled out of ballast water within a ship;

"surveyor" means a person appointed by the Authority as a surveyor of

ships pursuant section 11 of the *Shipping Act*.

(2) Any reference in this Act to an IMO Guideline is a reference to it as amended or replaced for the time being.

(3) Terms used in this Act which are used in the Convention have the same meaning in this Act as they have in the Convention.

Application.

3. - (1) Except as expressly provided otherwise in this Act, this Act shall apply to -

- (a) ships entitled to fly the flag of Jamaica;
- (b) ships not entitled to fly the flag of Jamaica but which operate under the authority of Jamaica; and
- (c) other ships when in Jamaican waters.

(2) This Act shall not apply to -

- (a) ships not designated or constructed to carry ballast water;
- (b) Jamaican ships which only operate in Jamaican waters, unless the Director 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 or other states;
- (c) other ships which operate in Jamaican waters, subject to such exclusion being authorized by the Authority.
- (d) ships which only operate in Jamaican waters and on the high seas, unless the Authority determines that the discharge of ballast water from such ships would impair or damage their environment, human health, property, resources, or those of adjacent 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;
- (g) Jamaican Government ships operated for non-commercial purposes;
- (h) ships that are owned by or are in the service and under the operational control of the Jamaica Defence Force; and

(i) ships that contain no ballast water other than that which is permanently contained in sealed tanks and is not subject to discharge.

(3) An authorization from the Authority, pursuant to subsection (2) (c) shall -

(a) not be granted in any case where doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States;

(b) be a prerequisite in relation to any ship in order for the exception contained in subsection (2) (d) to apply in relation to that ship.

(4) In any case where the Authority refuses to give an authorization under subsection (2) (c), it shall notify the Authority of the ship concerned that this Act applies to such ship.

PART II. *Surveys and Certificates*

Surveys.

4. - (1) Jamaican ships of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPOs, shall be subject to the following surveys -

(a) an initial survey before the ship is put in service or before the certificate required under regulation E-2 or E-3 of the Annex is issued for the first time, and this survey shall verify that the following comply fully with the requirements of this Act, namely -

(i) the Ballast Water Management plan required by regulation B-1 of the Annex; and

(ii) any associated structure, equipment, systems, fitting, arrangement and material or processes;

(b) a renewal survey at intervals specified by the Authority, but not exceeding five years, except where sub-regulations E-5.2, E-5.5, E-5.6 or E-5.7 of the Annex are applicable, and this survey shall verify that the following comply fully with the applicable requirements under this Act, namely -

(i) the Ballast Water Management plan required by V regulation B-1 of the Annex; and

(ii) any associated structure, equipment, systems, fitting,

arrangements and material or processes;

- (c) 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 (d), and such a survey shall -
 - (i) ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of the Annex and are in good working order; and
 - (ii) be endorsed on the Certificate issued under regulation E-2 or E-3 of the Annex;
- (d) 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 of the Annex, and such a survey shall -
 - (i) be carried out to ensure that they have been maintained in accordance with section 11(a) and remain satisfactory for the service for which the ship is intended; and
 - (ii) shall be endorsed on the certificate issued under regulation E-2 or E-3 of the Annex; and
- (e) an additional survey, either general or partial, according to the circumstances, which shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and materials necessary to achieve full compliance with this Act, and such a survey shall -
 - (i) 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 Act; and
 - (ii) be endorsed on the Certificate issued under regulation E-2 or E-3 of the Annex.

(3) Surveys shall be endorsed on the certificate as required by the Convention.

(4) The Authority shall establish appropriate measures for ships that are not subject to the provisions of paragraph 1 in order that the applicable provisions of this Act are complied with.

Nominated surveyors and recognized organizations.

5. - (1) Surveyors of ships for the purpose of enforcement of the provisions of this Act shall be carried out by surveyors appointed by the Authority.

(2) The Authority may, however, entrust the surveys referred to in paragraph (1) either to surveyors nominated for the purpose or to organizations recognized by it, in accordance with the guidelines adopted by the organization.

(3) The Authority, in nominating surveyors or organizations under paragraph (2) shall, as a minimum, empower such nominated surveyors or recognized organizations to -

- (a) require a ship that they survey to comply with the provisions of this Act; and
- (b) carry out surveys and inspections if requested by the appropriate authorities of a port State that is a party.

(4) The Authority shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

Issue of certificate.

6. - (1) A certificate shall be issued, after successful completion of a survey in accordance with section 4 to any Jamaican ship to which that section applies.

(2) The certificate shall be issued either by the Authority or by any person or organization duly authorized by it and in every such case the Director shall assume full responsibility for the certificate.

Issue of certificate upon request by a Convention member state.

7. - (1) The Authority may at the request of the Government of a Party cause a ship to be surveyed and, if satisfied that this Chapter has been complied with, shall issue or authorize the issue of a certificate to the ship in accordance with this Part.

(2) A certificate so issued shall contain a statement to the effect that it

s been issued at the request of the Government of a Party and a copy of it together with a copy of the survey report shall be transmitted as early as possible to the Government requesting the survey.

(3) A certificate issued by another party in respect of a Jamaican ship at the request of the Authority, shall have the same force and receive the same recognition in Jamaica as a certificate issued under this Part.

(4) No certificate shall be issued to a ship which does not fly the flag of a Party.

Form of certificate.

8. A certificate shall be in the form prescribed in the Convention.

Corrective action.

9. When the Authority, 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 section 6 or 7 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 -

(a) the Authority, surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance;

(b) a surveyor or organization shall be notified immediately, and it shall ensure that the certificate is not issued or is withdrawn as appropriate; and

(c) if the ship is in the port of another party, the appropriate authorities of that state shall be notified immediately.

Reports of accidents and defects.

10. - (1) 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 the Convention or this Act, as appropriate, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Authority, the recognized organization of the nominated surveyor responsible for issuing the relevant certificate, who shall cause investigations to be initiated to determine whether a survey as required by section 4 is necessary.

(2) 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.

**Maintenance
requirements.**

11. The owner, master or agent of any ship to which this Act applies shall ensure that –

- (a) 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; and
- (b) after any survey of the ship under section 4 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 the Convention and covered by the survey without the prior approval of the Authority, except the direct replacement of such equipment or fittings.

**Duration and
validity of
certificate.**

12. - (1) A certificate shall be issued for a period specified by the Authority that shall not exceed five years.

(2) For renewal surveys -

- (a) notwithstanding the requirements of subsection (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;
- (b) 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; and
- (c) 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 Authority 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 of the Annex 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 Authority 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 Authority may extend the period of validity of the certificate subject to the following provisions, namely -

- (a) such an 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 only in cases where it appears proper and reasonable to do so;
- (b) 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; and
- (c) 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 Authority for a period of grace of up to one month from the date of expiry stated on it and, 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 Authority, 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 regulation E-5 of the Annex and, 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 of the Annex, then -

- (a) 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;
- (b) the subsequent or intermediate survey required by regulation E-1 of the Annex shall be completed at the intervals prescribed by that regulation using the new Anniversary date;
- (c) the expiry date shall 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 of the Annex are not exceeded.

(9) A certificate issued under regulation E-2 or E-3 of the Annex shall cease to be valid in any of the following cases -

- (a) if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with this Act is changed, replaced or significantly repaired and the certificate is not endorsed in accordance with the Annex;
- (b) upon the transfer of the ship to the flag of another State, in which case the following shall apply -
 - (i) 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 of the Annex.
 - (ii) 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 Authority copies of the certificates carried by the ship before the transfer and, if available, copies of the relevant survey reports;

(c) if the relevant surveys are not completed within the periods specified under regulation E-1.1; or

(d) if the certificate is not endorsed in accordance with regulation E-1.1.

Transfer of flag.

13. - (1) Upon transfer of a Jamaican ship to the flag of another Party, where such state so requests within three months after the transfer has taken place, the Authority shall transmit as soon as possible to the Government of the state concerned, a copy of the certificate carried by the ship before the transfer and, if available, a copy of the ship's most recent survey report.

(2) Where a ship is transferred to the Jamaican flag, a new certificate shall only be issued when the Authority is fully satisfied that the ship is in full compliance with the requirements of Regulation E-1 of the Annex.

PART III. *Control and Management of Ships' Ballast Water and Sediments*

Discharge of Ballast water controlled.

14. Except where expressly provided otherwise in this Act, the owner and the master of a ship shall ensure that the discharge of ballast water is only conducted through ballast water management in accordance with the provisions of this Act and the Convention.

Exceptions from control.

15. The requirements of section 14, or any measures adopted, whether pursuant to section 24 or otherwise, shall not apply to -

(a) 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

(b) the accidental discharge or ingress of ballast water and sediments resulting from damage to a ship or to its equipment -

(i) 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

(ii) unless the owner, Company or officer in charge willfully or recklessly caused damage; or

(c) 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

- (d) the uptake and subsequent discharge on the high seas of the same ballast water and sediments; or
- (e) 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:

Provided that, if mixing has occurred, the ballast water taken from other areas is subject to ballast water management in accordance with this subsection.

Exemptions. 16. - (1) Subject to subsections (2) and (3), the Authority may grant exemptions, in relation to Jamaican waters, to any requirements of section 20 or 24, in addition to those exemptions contained elsewhere in this Act, in the circumstances set out in Regulation A-4 of the Annex.

(2) Exemptions granted pursuant to subsection (1) shall not be effective until after communication to the Organization and circulation of relevant information to the parties.

(3) The Authority shall not grant an exemption under this section which would impair or damage the environment, human health, property or resources of adjacent or other states.

(4) Any exemptions granted under this section shall be recorded in the Ballast Water Record Book.

Equivalence. 17. - (1) The Authority shall establish measures which provide for equivalent compliance with the requirements of this Act for pleasure crafts used solely for recreation or competition or craft used primarily for search and rescue, less than 50 meters in length overall, and with a maximum ballast water capacity of 8 cubic meters.

(2) In establishing the measures in subsection (1), the Director shall take into account IMO Guidelines for Ballast Water Management Equivalence Compliance (G3)3.

(3) Measures established under this section shall be published in a shipping notice.

(4) It shall be the duty of the owner and master of a craft referred to in subsection (1) to comply, and ensure compliance, with any measures established under that subsection.

Ballast Water Management Plan.

18. - (1) Every ship shall have on board and implement a Ballast Water Management Plan, which shall be approved by the Authority taking into account the Guidelines developed by the Organization.

(2) Each Ballast Water Management Plan shall be specific to the ship to which it relates and shall at least -

- (a) detail safety procedures for the ship and crew associated with Ballast water management as required by this Act;
- (b) provide a detailed description of the actions to be taken to implement the ballast water management requirements and supplemental ballast water management practices set forth in this Act;
- (c) detail the procedures for the disposal of sediments at sea and to shore;
- (d) 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;
- (e) designate the officer on board in charge of ensuring that the plan is properly implemented;
- (f) contain the reporting requirements for ships provided under this Act; and
- (g) be written in the working language of the ship:

Provided that if the working language of the ship is not English, French or Spanish, a translation thereof into one of these languages shall be included.

Ballast Water Record Book.

19. - (1) Every 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 at least shall contain the information required by Appendix II of the Annex.

(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 of the Annex, or in the event of other accidental or exceptional discharge of ballast water not otherwise exempted by this Act, an entry shall be made in the Ballast Water Record Book describing the circumstances of, and the reason for, the discharge.

(4) Each operation concerning ballast water shall be fully recorded without delay in the Ballast Water Record Book, and the following provisions shall apply to such entries -

- (a) each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master;
- (b) the entries in the Ballast Water Record Book shall be in a working language of the ship;
- (c) if that language is not English, French or Spanish, the entries shall contain a translation into one of those languages; and
- (d) 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.

(5) 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.

(6) 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.

(7) Any copy certified under subsection (5) shall be admissible in any judicial proceeding as evidence of the facts stated in the entry.

(8) Entries in the Ballast Water Record Book shall be made as required by Regulation B-3.3 and B-3.5 and B-4 of the Annex.

(9) The Ballast Water Record Book shall be kept readily available for inspection at all times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

**Ballast water
management
for ships.**

20. Ships shall conduct ballast water management in accordance with Regulation B-3 of the Annex [and set out in Schedule II of this Act].

Exchange standard.

21. - (1) A ship conducting ballast water exchange to meet the standard in this section shall do so with an efficiency of at least 95 percent volumetric exchange of ballast water.

(2) For ships exchanging ballast water through the pumping method, pumping through three times the volume of each ballast water tank shall be considered to meet the standard described in subsection (1) :

Provided that 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.

Ballast water exchange.

22. - (1) A ship conducting ballast water exchange to meet the standard set out in section 21 shall do so in accordance with the following -

(a) 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; and

(b) in cases where the ship is unable to conduct ballast water exchange in accordance with subparagraph (a), such ballast water exchange shall be conducted taking into account the Guidelines described in subparagraph (a) 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 areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph (1), 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 subparagraph (a).

(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.

Sediment Management for Ships.

23. - (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 of the Annex should, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and 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.

(3) Ships described in regulation B-3.1 of the Annex should, to the extent practicable, comply with paragraph (2).

Duties of officers and crew.

24. The owner and master of a ship shall ensure that officers and crew are familiar with their duties in the implementation of Ballast Water Management in particular to the ship on which they serve and are, appropriate to their duties, to be familiar with the ship's Ballast Water Management Plan.

Additional measures in certain areas.

25. - (1) The Authority may, with the approval of the Organization and by notice published in a shipping notice specify measures additional to those in sections 18 to 22 which he considers necessary to prevent, reduce or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' ballast water and sediments and, in specifying such measures, the Authority shall take into account the Guidelines developed by the Organization.

(2) The shipping notice shall -

- (a) specify the additional measures;
- (b) list all appropriate services, including to notification to mariners or areas available and alternative routes or ports, as far as practicable; and
- (c) recite the approval of IMO.

(3) It shall be the duty of every owner and master to comply with the additional measures.

(4) The Authority may, by notice published in a Merchant Shipping Notice, waive these additional measures for a period of time or in specified circumstances.

Warnings concerning Ballast water uptake in certain areas.

26. - (1) The Authority shall by Shipping Notice/Notice to Mariners notify mariners of areas in Jamaican waters where ships should not uptake ballast water due to known conditions, and such notices shall include -

- (a) the precise coordinates of the area or areas; and
- (b) where possible, the location of any alternative area of areas for the uptake of ballast water.

(2) Warnings may be issues for areas -

- (a) known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens such as 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 such Notices, the Authority shall notify the Organization and any potentially affected coastal states of any areas identified pursuant to subsections (1) or (2) and the time period such warning is likely to be in effect.

(4) The notice to the Organization and any potentially affected coastal states shall include -

- (a) the precise co-ordinates of the area or areas;
- (b) where possible, the location of any alternative area or areas for the uptake of ballast water; and
- (c) advice to ships needing to uptake ballast water in the area, describing arrangements made for alternative supplies.

(5) The Authority shall notify mariners, the Organization and any potentially affected coastal states when a given warning is no longer applicable.

Reception facilities.

27. - (1) The Port Authority in respect of a port or terminal operator in respect of a terminal, where cleaning or repair of ballast tanks occurs, shall provide adequate facilities for the reception of Sediments from ships using the port or terminal.

(2) The Port Authority shall notify the Authority whenever cleaning or repair of ballast tanks is undertaken within a Jamaican port.

(3) The Authority shall designate ports for the purposes of Article 5 of the Convention.

(4) The Minister may make regulations -

- (a) prescribing criteria for determining the adequacy and accessibility of reception facilities at ports and terminals designed in accordance with subsection (3), to ensure such reception facilities operate without causing undue delay to ships, and provide for the safe disposal of such Sediments so as not to impair or damage the environment, human health, property or resources, or those of other states; and
- (b) generally for implementing the requirement of the Convention relating to reception facilities for ballast water or Sediments.

PART IV. *Supplementary***Inspection of ships which are not Jamaican ships.**

28. - (1) A ship which is not a Jamaican ship to which this Act applies may, in any port or offshore terminal, be subject to inspection by officers duly authorized by the Authority for the purpose of determining whether the ship is in compliance with this Act and, except as provided in subsection (2) below, any such inspection is limited to -

- (a) verifying that there is onboard a certificate which, if valid, shall be accepted; and
- (b) inspection of the Ballast Water Record Book; or
- (c) a sampling of the ship's ballast water, carried in accordance with the guidelines by the Organization (if any):

Provided that the time required to analyze the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the ship.

(2) Where a ship does not carry a valid certificate or there are clear

grounds for believing that -

- (a) the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate; or
- (b) the master or the crew are not familiar with essential shipboard procedures relating to ballast water management, or have not implemented such procedures, a detailed inspection may be carried out.

(3) In the circumstances given in subsection (2), the inspector shall take such steps as will ensure that the ship shall not discharge ballast water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

Violations.

29. - (1) No ship, whether Jamaican or not, shall violate the provisions of this Act while at a Jamaican port or offshore terminal or while sailing in Jamaican waters.

(2) Where it is reported to the Authority that any ship has violated any provision of this Act, the Authority shall investigate the alleged violation and may request the party who reported the alleged violation to furnish evidence thereof.

(3) After the Authority has completed its investigations and has been furnished with any additional evidence it may have requested under subsection (2), the Authority shall cause proceedings under section [] to be brought in respect of the alleged violation if it is satisfied that sufficient evidence is available.

(4) The Authority shall promptly advise the party who reported the alleged violation -

- (a) where action is taken in accordance with subsection (3), of such action; or
- (b) where one year has elapsed since the alleged violation was reported and no action has been taken, that no action has been taken.

(5) The Authority may, instead of taking action in accordance with subsection (3) in relation a ship that is not a Jamaican ship, furnish the relevant administration of the country where the ship is registered [or whose flag the ship flies] with such information and evidence that a violation has occurred as

my be in the Authority's possession.

(6) The Minister may make Regulations prescribing penalties for violations of the provisions of this Act.

Detection of violations and control of ships.

30. - (1) Where a ship which is not a Jamaican ship which is operating in a Jamaican port or offshore terminal is found to have contravened this Act, the Authority may, without prejudice to any penalties provided elsewhere in this Act, or any action described in section 27, take steps to warn, detain or exclude the ship:

Provided that the Director may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging ballast water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.

(2) If the sampling described in section 27(1)(c) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Authority shall prohibit such ship from discharging ballast water until the threat is removed.

(3) An inspector may also inspect a ship when it enters a Jamaican port or offshore terminal if a request for an investigation is received from any State Party to the Convention, together with sufficient evidence that a ship is operating or has operated in violation of a provision in this Convention, and the report of such investigation shall be sent to the State requesting it and to the competent authority of the Authority of the ship concerned so that appropriate action may be taken.

Notification of control actions.

31. - (1) If an inspection conducted pursuant to section 27 indicates a violation of this Act, the Authority shall notify the ship and the Director shall forward a report to the Authority of the ship concerned, including evidence of the violation.

(2) In the event that any action is taken in relation to a ship pursuant to section 27(3) or section 28(1) or (2), the officer carrying out such action shall forthwith inform, in writing, the Authority of the ship concerned, or if this is

not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary and, in addition, the recognized organization responsible for the issue of certificates shall be notified.

(3) The Authority shall, in addition to parties mentioned in subsection (2), notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in section 27(3) or section 28(1) or (2) or if the ship has been allowed to proceed to the next port of call.

Undue delay to ships.

32. - (1) The Authority shall make every possible effort to avoid undue detaining or delaying of a ship under sections 27, 28 or 29.

(2) A ship that is unduly detained or delayed under sections 27, 28 or 29 shall be entitled to compensation for any loss or damage suffered.

Service of documents on ship owners, application of fines, etc.

33. - (1) Any document required or authorized, by virtue of any statutory provision, to be served on a ship owner for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act alleged to have been committed by the owner, shall be treated as duly served on that owner if the document is served in accordance with the provisions of this Act, and any person authorized to serve any document for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act (whether or not in pursuance of the foregoing provisions of this subsection) shall, for that purpose, have the right to go on board the ship in question.

(2) A person exercising the power of detention in respect of an alleged contravention of this Act shall immediately release the ship if -

- (a) no proceedings for the offence in question are instituted within three working days including the day the ship is detained;
- (b) such proceedings, having been instituted through exercise of the power conferred by subsection (1), within that period, are concluded without the master or owner being convicted;
- (c) either -
 - (i) the sum of one hundred thousand dollars in United States currency is paid to the Minister by way of security; or

- (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than one hundred thousand dollars in United States currency is given to the Minister, by or on behalf of the master or owner; or
 - (d) where the master or owner is convicted of the offence, any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid, or;
 - (e) [the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea, 1982, and any bond or other financial security ordered by such a court or tribunal is posted.]
- (3) The Minister shall repay the sum paid in pursuance of subsection (2)(c) or release any security so given -
- (a) if no proceedings for the offence in question are instituted within seven days beginning with the day on which the sum is paid; or
 - (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.
- (4) Where the sum has been paid, or security has been given, by any person in pursuance of subsection (2) (c) and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows -
- (a) first in payment of any costs or expenses ordered by the Court to be paid by the master or owner; and
 - (b) next in payment of any fine imposed by the Court,
- and any balance shall be repaid to the person paying the sum or giving the security.
- (5) Where a fine imposed by a Court in proceedings against the owner or master of a ship for an offence under this Act is not paid of any costs or expenses ordered to be paid by him are not paid at 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 or arrestment and sale of the ship, her tackle, furniture and apparel.

(6) Where a person is convicted of an offence under this Act, and the Court imposes a fine in respect of the offence, then if it appears to the Court that any person has incurred, or will incur, expenses in removing any pollution, or making any damage, which is attributable to the offence, the Court may order the whole or part of the fine to be paid to that persons for or towards defraying those expenses.

(7) This section applies without prejudice to the application of section 31.

Restriction on jurisdiction over offences outside Jamaican limits.

34. - (1) No proceedings for an offence of contravening any provisions of this Act by a ship not being a Jamaican ship, which relates to a discharge in the internal waters, territorial seas or exclusive economic zone of another state shall be instituted unless -

- (a) that state, the flag state or a state damaged or threatened by the discharge request that proceedings be taken; or
- (b) the discharge has caused or is likely to cause pollution of the internal waters, territorial sea or exclusive economic zone of Jamaica.

(2) Where proceedings for an offence of contravening any provision of this Act by a ship not being a Jamaican ship which relates to a discharge in the internal waters, territorial seas or exclusive economic zone of another state have been instituted but not concluded, and that state requests suspension of the proceedings, then -

- (a) proceedings shall be suspended; and
- (b) the Director shall transmit all the evidence and Court records and documents relating to the case, together with any sum paid or security given pursuant to section 32(2)(c), to that state.

(3) It shall be a defence to a person charged with contravening any provision of this Act to show -

- (a) that that ship is not a Jamaican ship; and
- (b) the discharge took place outside Jamaica, its internal waters or Jamaican protected waters; and
- (c) the ship was in a port in Jamaica at the time of institution of proceedings by reason only of stress of weather or other reason beyond the

control of the master or owner or charterer.

Suspension of proceedings at flag state request.

35. - (1) This section relates to an alleged offence or contravention of any provision of this Act by a ship which is not a Jamaican ship, in relation to a discharge outside Jamaica or its territorial seas.

(2) Any proceedings for an offence referred to in subsection (1) shall be stayed if the Court is satisfied that the flag state has instituted proceedings corresponding to the proceedings in Jamaica in respect of the discharge, within six months of the institution of proceedings in Jamaica:

Provided that the foregoing provisions of this subsection shall not apply -

- (a) where the discharge resulted in damage in excess of one hundred thousand dollars in United States currency to Jamaica; or
- (b) the Authority certified that the flag state has repeatedly disregarded its obligation to enforce effectively the requirements of any Convention referred to in this Act in respect of its ship.

(3) Where proceedings instituted by the flag state have been brought to a conclusion, the suspended proceedings shall be terminated.

(4) Where the costs of the Authority incurred in respect of proceedings suspended under subsection (2) have been paid, any money paid or security given under section 32(2) (c) shall be released.

Offences.

36. - (1) It shall be the duty of the owner and master of the ship to comply with, and ensure compliance with, the provisions of this Act.

(2) It shall be the duty of any person upon whom an obligation is placed by or under this Act to comply or ensure compliance with that obligation.

(3) Where a person specified in subsection (1) or (2) contravenes the respective subsection that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding two hundred thousand dollars in United States currency.

(4) It shall be a defence for a person charged under subsection (1) or (2) to show that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(5) Where an offence under this section is committed or would have

been committed save for the operation of subsection (4), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this subsection whether or not proceedings are taken against the first mentioned person.

Protection of Government and public officers.

37. No suit shall be maintained against the Government, Authority or any public officer or other person appointed or authorized to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

Power to make regulations and orders.

38. - (1) The Minister may make regulations generally for the further implementation of the Conventions or for the Authority of this Act, including for the purpose of prescribing fees and other payments.

(2) Without prejudice to the above, the Minister may, for the purpose of giving effect to any amendment or replacement of the Convention -

- (a) by order make such amendment to any provision of this Act; or
- (b) make regulations,

as appear to him to be necessary or expedient; and any such order shall be subject to affirmative resolution.

PART V. Enforcement Officers and Powers

Appointment of Director, surveyors and inspectors.

39. - (1) The Director shall appoint such officers as surveyors of ships in connection with surveys of ships and other matters incidental thereto as he thinks fit.

(2) The Director may appoint persons to be surveyors of ships for the purposes of this Act and may remove any person so appointed.

(3) A surveyor of ships may be appointed as a ship surveyor or small ship surveyor as an engineer surveyor in any of all of these categories.

(4) Surveyors of ships may be appointed either generally or for any particular case or purpose.

(5) The Director may, if he thinks fit, appoint a surveyor or any other person as an inspector -

- (a) to report to him -

- (i) upon the nature and causes of any accident or damage which any ship has or is alleged to have sustained or caused;
 - (ii) whether any requirements, restrictions or prohibitions imposed by or under this Act have been complied with or, as the case may be, contravened;
 - (iii) whether the hull and machinery of a ship are sufficient and in good condition;
- (b) for the purposes of sections 43, 44, 49 and 53.

(6) In this Act “surveyor of ships” means a surveyor appointed under subsection (1) and (2), and the reference to requirements, restrictions or prohibitions under this Act includes any such requirements, restrictions or prohibitions constituting the terms of any approval, licence, consent or exemption given any document issued under this Act.

Inspection, Etc. Powers

**Powers to
require
production
of ship’s
documents.**

40. - (1) The powers conferred by this section are conferred in relation to Jamaican ships and are available to any of the following officers, namely -
- (a) the Director;
 - (b) a surveyor of ships;
 - (c) any Jamaican consular officer;
 - (d) the Registrar of Ships;
 - (e) the Registrar of Seafearers,

whenever the officer has reason to suspect that this Act or any law for the time being in force relating to merchant seamen or navigation is not complied with.

- (2) Those powers are -
- (a) to require the owner, master, or any of the crew to produce any official log books or other documents relating to the crew or any member of the crew in their possession or control;
 - (b) to require the master to produce a list of all person on board a ship, and take copies of or extracts from the official log books or other such documents;
 - (c) to muster the crew; and
 - (d) to require the master to appear and give any explanation concerning

the ship or her crew or the official log books or documents produced or required to be produced.

(3) Where any person, on being duly required by an officer under this section to produce a log book or any document, fails without reasonable excuse to produce the log book or document, he is guilty of an offence and liable on summary conviction to a fine not exceeding twenty five thousand dollars in United States currency.

(4) Where any person, on being duly required by any officer under this section -

- (a) to produce a log book or document, refuses to allow the log book or document to be inspected or copied;
- (b) to muster the crew, impedes the muster; or
- (a) to give any explanation, refuses or neglects to give the explanation or knowingly misleads or deceives the officer,

he is guilty of an offence and liable on summary conviction to a fine not exceeding thirty thousand dollars in United States currency.

Power to inspect ships and their equipment.

41. - (1) For the purposes of seeing that the provisions of this Act and of regulations made under this Act or that the terms of any approval, licence, consent, direction or exemption given by virtue of such regulations are duly complied with, a surveyor of ships may at all reasonable times go on board a ship and inspect the ship and its equipment or any part thereof, any articles on board and any document carried in the ship in pursuance of this Act, or regulations made under this Act.

(2) The powers conferred by subsection (1) are, if the ship is a Jamaican ship, also exercisable outside Jamaica and may be so exercised by a proper officer as well as the persons mentioned in that subsection.

(3) A person exercising powers under this section shall not unnecessarily detain or delay a ship but may, if he considers it necessary in consequence of an accident or for any other reason, require a ship to be taken into dock for a survey of its hull or machinery.

(4) Where any such person as is mentioned in subsection (1) has reasonable grounds for believing that there are on any premises, provisions or

waters intended for supply to a Jamaican ship which, if provided on the ship, would not be in accordance with regulations containing requirements as to provisions and water to be provided on ships he may enter the premises and inspect the provisions of water for the purpose of ascertaining whether they would be in accordance with the regulations.

(5) Where any person obstructs a person in the exercise of his powers under this section, or fails to comply with a requirement made under subsection (3), he is guilty of an offence and liable, on summary conviction, to a fine not exceeding thirty thousand dollars in United States currency.

Powers of inspectors in relation to premises and ships.

42. - (1) The powers conferred by this section are conferred in relation to -

- (a) any premises in Jamaica; or
- (b) any Jamaican ship wherever it may be and any other ship which is present in Jamaica or in Jamaican waters,

and are available to any inspector appointed under section 38(5) for the purpose of performing his functions.

(2) Such an inspector -

- (a) may at any reasonable time or, in a situation which in his opinion is or may be dangerous, at any time -
 - (i) enter any premises, or
 - (ii) board any ship,

if he has reason to believe that it is necessary for him to do so;

- (b) may, on entering any premises by virtue of paragraph (a) or on board a ship by virtue of that paragraph, take with him any other person authorized for the purpose by the Director, and any equipment or materials he requires;
- (c) may make such examination and investigation as he considers necessary;
- (d) may give a direction requiring that the premises or ship or any part of the premises or ship or anything in the premises or ship or such a part shall be left undisturbed, whether generally or in particular respects, for so long as is reasonably necessary for the purposes or any examination or investigation under paragraph (c);

- (e) may take such measurements and photographs and make such recordings as he considers necessary for the purpose of any examination or investigation under paragraph (c);
- (f) may take samples of any articles or substances found in the premises or ship and of the atmosphere in or in the vicinity of the premises or ship;
- (g) may, in the case of any article or substance which he finds in the premises or ship and which appears to him to have caused or to be likely to cause danger to health or safety, cause it to be dismantled or subjected to any process or test, but not so as to damage or destroy it unless that is in the circumstances necessary;
- (h) may, in the case of such article or substance as is mentioned in paragraph (g), take possession of it and detain it for so long as is necessary for all or any of the following purposes, namely -
 - (i) to examine it and do to it anything which he has power to do under that paragraph;
 - (ii) to ensure that it is not tampered with before his examination of it is completed; or
 - (iii) to ensure that it is available for use as evidence in any proceedings for an offence under this Act or any instrument made under it;
- (i) may require any person who he has reasonable cause to believe is able to give away any information relevant to any examination or investigation under paragraph (c) -
 - (i) to attend at a place and time specified by the inspector; and
 - (ii) to answer, in the absence of person other than any persons whom the inspector may allow to be present and a person nominated to be present by the person on whom the requirement is imposed, such questions as the inspector thinks fit to ask; and
 - (iii) to sign a declaration of the truth of his answers;
- (j) may require the production of, and inspect and take copies of, or of

any entry in -

- (i) any books or documents which by virtue of any provision of this Act are required to be kept; and
 - (ii) any other books or documents which he considers it necessary for him to see for the purposes of any examination or investigation under paragraph (c);
- (k) may require any person to afford him such facilities and assistance with respect to any matters or things within that person's control or in relation to which that person has responsibilities as the inspector considers are necessary to enable him to exercise any of the powers conferred on him by this subsection.

(3) It is hereby declared that nothing in the preceding provisions of this section authorizes a person unnecessarily to prevent a ship from proceeding on a voyage.

(4) The Minister may by regulations make provision as to the procedure to be followed in connection with the taking of samples under subsection (2) (f) and subsection (7) and provision as to the way in which samples that have been so taken are to be dealt with.

(5) Where an inspector proposes to exercise powers conferred by subsection (2)(g) in the case of an article or substance found in any premises or ship, he shall, if so requested by a person who at the time is present in, and has responsibilities in relation to the premises or ship, cause anything which is to be done by virtue of that power to be done in the presence of that person unless the inspector considers that its being done in that person's presence would be prejudicial to the safety of that person.

(6) Before exercising the power conferred by subsection (2)(g), an inspector shall consult such persons as appear to him appropriate for the purpose of ascertaining what dangers, if any, there may be in doing anything which he proposes to do under that power.

(7) Where under the power conferred by subsection (2)(h), an inspector takes possession of any article or substance found in any premises or ship, he shall leave there, either with a responsible person or, if that is

impracticable, fixed in a conspicuous position, a notice giving particulars of that article or substance sufficient to identify it and stating that he has taken possession of it under that power; and before taking possession of any such substance under that power an inspector shall, if it is practicable for him to do so, take a sample of the substance and give to a responsible person at the premises or on board the ship a portion of the sample marked in a manner sufficient to identify it.

(8) No answer given by a person in pursuance of a requirement imposed under subsection (2)(i) shall be admissible in evidence against that person or the husband or wife of that person in any proceedings except proceedings in pursuance of subsection (1)(c) of section 41 in respect of a statement in or a declaration relating to the answer; and a person nominated as mentioned in the said subsection (2)(i) shall be entitled, on the occasion on which the questions there mentioned are asked, to make representations to the inspector on behalf of the person who nominated him.

**Provision
supplemen-
tary to section
359.**

43. - (1) A person who -
- (a) intentionally obstructs an inspector in the exercise of any power available to him under section 40; or
 - (b) without reasonable excuse, does not comply with a requirement imposed in pursuance of section 40 or prevents another person from complying with such a requirement; or
 - (c) without prejudice to the generality of paragraph (b), makes a statement or signs a declaration which he knows is false, or recklessly makes a statement or signs a declaration which is false, in purported compliance with a requirement made in pursuance of subsection (2)(i) of section 40,

is guilty of an offence and liable on summary conviction, to a fine not exceeding one hundred thousand dollars in United States currency.

(2) Nothing in section 41 shall be taken to compel the production by any person of a document which he would on grounds of legal professional privilege be entitled to withhold production on an order for discovery in an action in the Supreme Court.

(3) A person who complies with a requirement imposed on him in pursuance of paragraph (i), (j) or (k) of subsection (2) of section 41 shall be entitled to recover from the person who imposed the requirement such sums in respect of the expenses incurred in complying with the requirement as may be prescribed.

(4) Any payments under subsection (3) shall be made out of money provided out of the Consolidated Fund.

Improvement Notices and Prohibition Notices

Improvement notices.

44. - (1) Where an inspector appointed under section 37(5) is of the opinion that a person -

- (a) is contravening one or more of the relevant statutory provisions; or
- (b) has contravened one or more of those provisions in circumstances that make it likely that the contravention will continue to be repeated, he may serve on that person a notice under this section referred to in the following sections of this Part as an "improvement notice".

(2) An improvement notice shall -

- (a) state that the inspector is of the said opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (b) require the person on whom the notice is served to remedy the contravention in question or, as the case may be, the matters occasioning it within such period as may be specified in the notice.

(3) The period specified in pursuance of subsection (2)(b) shall not expire before the end of the period within which a notice can be given under section 45 requiring questions relating to the improvement to be referred to arbitration.

Prohibition notices.

45. - (1) Where, as regards any relevant activities which are being or are likely to be carried on board any ship by or under the control of any person, an inspector appointed under section 37(5) is of the opinion that, as so carried on or as likely to be carried on, the activities involve or, as the case may be, will involve the risk of serious personal injury to any person, whether on board the ship or not, the inspector may serve on the first-mentioned person a notice

under this section referred to in the following sections of this Part as a “prohibition notice”.

(2) In subsection (1), “relevant activities” means activities to or in relation to which any of the relevant statutory provisions apply or will, if the activities are carried on as mentioned in that subsection, apply.

(3) A prohibition notice shall -

- (a) state that the inspector is of the said opinion;
- (b) specify the matters which his opinion give or, as the case may be, will give rise to the said risk;
- (c) where in his opinion any of those matters involve or, as the case may be, will involve a contravention of any of the relevant statutory provisions state that he is of that opinion, specify the provision or provisions as to which he is of that opinion, and give particulars of the reasons why he is of that opinion; and
- (d) direct -
 - (i) that the activities to which the notice related shall not be carried on by or under the control of the person on whom the notice is served; or
 - (ii) that the ship shall not go to sea,

or both subparagraphs (i) and (ii), unless the matters specified in the notice in pursuance of paragraph (b), and any associated contravention of any provisions so specified in pursuance of paragraph (c), have been remedied.

(4) A direction contained in a prohibition notice in pursuance of subsection (3)(d) shall take effect -

- (a) at the end of a period specified in the notice; or
- (b) if the direction is given in pursuance of subsection (3)(d)(ii) or the notice so declares, immediately.

Provisions supplementary to sections 43 and 44.

46. - (1) An improvement notice or a prohibition notice may include directions as to the measures to be taken to remedy any contravention of matter to which the notice relates; and any such directions may be framed so as to afford the person on whom the notice is served a choice between different ways of remedying the contravention or matter.

(2) An improvement notice or a prohibition notice shall not direct any measures to be taken to remedy the contravention of any of the relevant statutory provisions that are more onerous than those necessary to secure compliance with that provision.

(3) Where an improvement notice or a prohibition notice that is not to take immediate effect has been served -

- (a) the notice may be withdrawn by an inspector at any time before the end of the period specified in it in pursuance of section 42(2)(b) or, as the case may be, section 44; and
- (b) the period so specified may be extended or further extended by an inspector at any time when a reference to arbitration in respect of the notice is not pending under section 46.

References of notices to arbitration.

47. - (1) Any question -

- (a) as to whether any of the reasons or matters specified in an improvement notice or a prohibition notice in pursuance of section 42(2)(a) or 43(3)(b) or (c) in connection with any opinion formed by the inspector constituted a valid basis for that opinion; or
- (b) as to whether directions included in the notice in pursuance of section 44(1) were reasonable,

shall, if the person on whom the notice was served so requires by a notice given to the inspector within twenty-one days from the service of the notice, be referred to a single arbitrator appointed by agreement between the parties for that question to be decided by him.

(2) Where a notice is given by a person in accordance with subsection (1), then -

- (a) in the case of an improvement notice, the giving of the notice shall have the effect of suspending the operation of the improvement notice until the decision of the arbitrator is published to the parties or the reference is abandoned by that person;
- (b) in the case of a prohibition notice, the giving of the notice shall have the effect of so suspending the operation of the prohibition notice if, but only if, on the application of that person the arbitrator so directs,

and then only from the giving of the direction.

(3) Where, on a reference under this section the arbitrator decides as respects any reason, matter or direction to which the reference relates, that in all the circumstances -

- (a) the reason or matter did not constitute a valid basis for the inspector's opinion; or
- (b) the direction was unreasonable,

he shall either cancel the notice or affirm it with such modifications as he may in the circumstances think fit; and in any other case the arbitrator shall affirm the notice in its original form.

(4) A person shall not be qualified for appointment as an arbitrator under this section unless he is -

- (a) a person holding an unrestricted certificate of competency as a master mariner or as a chief engineer officer, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person with at least 10 years standing as an attorney-at-law;
- (d) a person with special experience of shipping matters, or of activities carried on in ports.

(5) In connection with his functions under this section, an arbitrator shall have the powers conferred on an inspector by section 40(3).

Compensation in connection with invalid prohibition notices.

48. - (1) Where on a reference under section 45 relating to a prohibition notice -

- (a) the arbitrator decides that any reason or matter did not constitute a valid basis for the inspector's opinion; and
- (b) it appears to him that there were no reasonable grounds for the inspector to form that opinion,

the arbitrator may, subject to subsection (3), award the person on whom the notice was served such compensation in respect of any loss by him in consequence of the service of the notice as the arbitrator thinks fit.

(2) Where on any such reference the arbitrator decides that any direction included in the notice was unreasonable, the arbitrator may, subject

to subsection (3), award the person on whom the notice was served such compensation in respect of any loss suffered in consequence of the direction as the arbitrator thinks fit.

(3) An arbitrator shall not award any compensation under subsection (1) or (2) in the case of any prohibition notice unless -

(a) it appears to him that the direction given in pursuance of section 44(3)(d) contained any such requirement as is mentioned in subparagraph (ii) of that provision; or

(b) it appears to him that -

(i) the inspector was of the opinion that there would be such a risk of injury as is referred to in the notice if the ship went to sea; and

(ii) the effect of the direction given in pursuance of section 44(3)(d) was to prohibit the departure of the ship unless the matters or, as the case may be, the matters and contraventions referred to in the direction were remedied.

(4) Any compensation awarded under this section shall be payable out of the Consolidated Fund.

Offences. 49. - (1) Any person who contravenes any requirement imposed by an improvement notice is guilty of an offence and liable on summary conviction to a fine not exceeding seventy thousand dollars in United States currency.

(2) Any person who contravenes any prohibition imposed by a prohibition notice is guilty of an offence and liable on summary conviction, to a fine not exceeding eighty thousand dollars in United States currency.

(3) It shall be a defence for a person charged with an offence under this section to prove that he exercised all due diligence to avoid a contravention of the requirement or prohibition in question.

(4) In this section any reference to an improvement notice or a prohibition notice includes a reference to any such notice as modified under section 46.

Prosecution of Offences.

- Time limit for summary offences.** 50. - (1) Subject to subsections (2) and (3), no person shall be convicted of an offence under this Act in summary proceedings unless -
- (a) the proceedings were commenced within two years beginning with the date on which the offence was committed; or
 - (b) in a case where the accused happens during that period to be out of Jamaica, the proceedings were commenced within two months after he first happens to arrive within Jamaica and before the expiration of three years beginning with the date on which the offence was committed.
- (2) Nothing in subsection (1) shall apply in relation to any indictable offence.
- (3) Subsection (1) shall not prevent a conviction for an offence in summary proceedings begun before the expiration of three years beginning with the date on which the offence was committed and before -
- (a) the expiration of the period of six months beginning with the day when the evidence which the Director of Public Prosecutions considers is sufficient to justify a prosecution for the offence came to his knowledge; or
 - (b) the expiration of two months beginning with the day when the accused was first present in Jamaica after the expiration of the period mentioned in paragraph (a), if throughout that period the accused was absent from Jamaica.
- (4) For the purpose of subsection (3) -
- (a) a certificate of the Director of Public Prosecutions stating that evidence came to his knowledge on a particular day shall be conclusive evidence of that fact; and
 - (b) a document purporting to be a certificate of the Director of Public Prosecutions and to be signed on his behalf shall be presumed to be such a certificate unless the contrary is proved.

- Time limit for summary orders.** 51. No order for the payment of money shall be made under this Act in

proceedings before a Magistrate's Court unless –

- (a) the proceedings were commenced within six months beginning with the date on which the matter of complaint arose; or
- (b) in a case where either or both of the parties to the proceedings happen during that period to be out of Jamaica, the proceedings were commenced within six months after they both first happen to arrive, or to be at one time, within Jamaica.

Offences by officers of bodies corporate.

52. – (1) Where a body corporate is guilty of an offence under this Act or any instrument made under it, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such a capacity, he as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) Any document required or authorized, by virtue of any statutory provision, to be served on a foreign company for the purpose of the institution of, or otherwise in connection with, proceedings for an offence under this Act alleged to have been committed by the company as the owner of a ship, shall be treated as duly served on that company if the document is served on the master of the ship; and any person authorized to serve any document for the purposes of the institution of, or otherwise in connection with proceedings for an offence under this Act (whether or not in pursuance of the foregoing provisions of this section) shall, for that purpose, have the right to go on board the ship in question.

Persons who may prosecute.

53. Prosecutions in respect of offences under this Act may (without prejudice to the provisions of any other enactment relating to prosecutions) be conducted by any officer appointed under this Act and specifically authorized in writing in that behalf by the Director.

Prosecution of offences and penalties.

54. - (1) A person who commits an offence under this Act, for which no specific penalty is provided, is liable to a fine not exceeding one hundred and twenty thousand dollars in United States currency.

(2) Where an offence under this Act is a continuing one, and no

penalty is provided in respect of the continuance thereof elsewhere than in this section, every person who commits that offence, in addition to any other liability, is liable to a fine of six thousand dollars in United States currency for every day or part thereof during which the offence continues after conviction.

Director's power to compound an offence.

55. – (1) The Director may compound any offence under this Act which is prescribed to be an offence compoundable by the Director on payment by the person suspected of having committed such offence of a sum of money not exceeding one hundred and twenty thousand dollars in United States currency.

(2) On the payment of any sum of money under subsection (1) -

- (a) the person suspected of having committed the offence in respect of which the payment has been made shall, if in custody, be discharged;
- (b) any ship detained in respect of such offence shall be released; and
- (c) no further proceedings shall be taken against such person or ship in respect of such offence.

Jurisdiction

Jurisdiction in relation to offences.

56. - (1) For the purpose of conferring jurisdiction, any offence under this Act shall be deemed to have been committed in any place in Jamaica where the offender may be for the time being.

(2) For the same purpose, any matter of complaint under this Act shall be deemed to have arisen in any place in Jamaica where the person complained against may be for the time being.

(3) The jurisdictions under subsections (1) and (2) shall be in addition to, and not in derogation of, any jurisdiction of power of the Court under any other enactment.

Jurisdiction over ships lying off coasts.

57. Where the area within which the Court has jurisdiction is situated on the coast of the sea or abuts on or projects into any bay, channel, or other navigable water, the Court shall have jurisdiction as respects offences under this Act over any vessel being on, or lying or passing off, that coast or being in or near that bay, channel, or navigable water and over all persons on board that vessel of for the time being belonging to it.

Jurisdiction in case of offences on

58. Where any person is charged with having committed any offence under

board ship. this Act the person -

- (a) if he is a Jamaican citizen and is charged with having committed it -
 - (i) on board any Jamaican ship on the high seas;
 - (ii) in any foreign port or harbour; or
 - (iii) on board any foreign ship to which he does not belong; or
- (b) if he is not a Jamaican citizen and is charged with having committed it on board any Jamaican ship on the high seas,

and he is found within the jurisdiction of the Court in Jamaica which would have had jurisdiction in relation to the offence if it had been committed on board a Jamaican ship within the limits of its ordinary jurisdiction to try the offence, the Court shall have jurisdiction to try the offence as if it had been so committed.

Offences committed by Jamaican seafarers.

59. - (1) Any act in relation to property or person done in or at any place, ashore or afloat, outside Jamaica by any master or seafarer who at the time is employed in a Jamaican ship, which, if done in any part of Jamaica would be an offence under the law of Jamaica, shall -

- (a) be an offence under that law; and
- (b) be treated for the purposes of jurisdiction and trial, as if it had been done within the jurisdiction of the Court.

(2) Subsection (1), also applies in relation to a person who had been so employed within the period of three months expiring with the time when the act was done.

(3) Subsections (1) and (2) apply to omissions as they apply to acts.

Return of offenders.

60. - (1) The powers conferred on a Jamaican consular officer by subsection (2) are exercisable in the event of any complaint being made to him -

- (a) that any offence against property or persons has been committed at any place, ashore or afloat, outside Jamaica by any master or seafarer who at the time when the offence was committed, or within three months before that time, was employed in a Jamaican ship;
- (b) that any offence on the high seas has been committed by any master or seafarer belonging to any Jamaican ship.

(2) Those powers are -

- (a) to inquire into the case upon oath; and
- (b) if the case so requires, to take any steps in his power for the purpose of placing the offender under the necessary restraint and sending him by a Jamaican ship as soon as practicable in safe custody to Jamaica for proceedings to be taken against him.

(3) The consular officer may, subject to subsections (4) and (5), order the master of any Jamaican ship bound for Jamaica to receive and carry the offender and the witnesses to Jamaica; and the officer shall endorse upon the agreement of the ship such particulars with respect to them as the Director requires.

(4) A consular officer shall not exercise the power conferred by subsection (3), unless no more convenient means of transport is available or it is available only at disproportionate expense.

(5) No master of a ship may be required under subsection (3) to receive more than one offender for every 100 tons of his ship's gross tonnage, or more than one witness for every 50 tons of his ship's gross tonnage.

(6) The master of any ship to whose charge an offender has been committed under subsection (3) shall, on his ship's arrival in Jamaica, give the offender into the custody of a police officer.

(7) Where any master of a ship, when required under subsection (3) to receive and carry any offender or witness in his ship -

- (a) fails to do so; or
- (b) in the case of an offender, fails to deliver him as required by subsection (6),

he is guilty of an offence and liable on summary conviction to a fine not exceeding sixty five thousand dollars in United States currency.

(8) The expenses of imprisoning any such offender and of carrying him and witnesses to Jamaica otherwise than in the ship to which they respectively belong, shall be paid out of money provided in the Consolidated Fund.

(9) References in this section to carrying a person in a ship include affording him subsistence during the voyage.

Detention of ship and distress on ship

**Enforcing
detention of
ship.**

61. - (1) Where under this Act a ship is to be detained, any of the following officers may issue an order for detention and detain the ship -

- (a) the Director;
- (b) any surveyor of ships authorized by the Director for the purpose;
- (c) any Jamaican consular officer; or
- (d) any person authorized in writing by the Director.

(2) Where a ship which has been detained or as respects which, notice of detention or an order for detention has been served on the master, proceeds to sea before it is released by a competent authority, the master of the ship is guilty of an offence and liable -

- (a) on summary conviction, to a fine not exceeding one hundred and twenty thousand dollars in United States currency; or
- (b) on conviction on indictment, to a fine not exceeding three hundred and fifty thousand dollars in United States currency.

(3) The owner of a ship, and any person who sends to sea a ship, as respects which an offence is committed under subsection (2) is, if party or privy to the offence, also guilty of an offence under that subsection and is liable accordingly.

(4) Where a ship proceeding to sea in contravention of subsection (2) takes to sea any officer authorized by subsection (1) to detain a ship, who is on board the ship in the execution of his duty, the owner and master of the ship shall each -

- (a) be liable to pay all expenses of, and incidental to, the officer being so take to sea; and
- (b) be guilty of an offence.

(5) A person guilty of an offence under subsection (4) is liable -

- (a) on summary conviction, to a fine not exceeding thirty thousand dollars in United States currency;
- (b) on conviction on indictment, to a fine not exceeding sixty five thousand dollars in United States currency.

(6) Any reference in this section to proceeding to sea includes a reference to going on a voyage or excursion that does not involve going to sea

and references to sending or taking to sea shall be construed accordingly.

(7) Where under this Act a ship is to be detained, an officer of customs and excise shall, and where under this Act a ship may be detained, an officer of customs and excise may, refuse to clear the ship outwards or grant a transire to the ship.

(8) When any provision of this Act provides that a ship may be detained until any document is produced to the proper officer of customs and excise the officer able to grant a clearance or transire of the ship is, unless the context otherwise requires, that officer.

(9) A person exercising the power of detention in respect of an alleged contravention of this Act shall immediately release a ship if -

- (a) no proceedings for the offence in question are instituted within seven days beginning with the day on which the ship is detained;
- (b) such proceedings, having been instituted through the exercise of the power conferred by subsection (1) within that period, are concluded without the master or owner being convicted;
- (c) either –
 - (i) the sum of six hundred and fifty thousand dollars in United States currency is paid to the Minister by way of security; or
 - (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than six hundred and fifty thousand dollars in United States currency is given to the Minister by or on behalf of the master or owner; or
- (d) where the master or owner is convicted of the offence, any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid; or
- (e) the release ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea 1982, and any bond or other financial security ordered by such a court or tribunal is

posted.

(10) The Minister shall repay any sum paid in pursuance of subsection (9)(c) or release any security so given -

- (a) if no proceedings for the offence in question are instituted within seven days beginning with the day on which the sum is paid; or
- (b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.

(11) Where the sum has been paid, or security has been given, by any person in pursuance of subsection (9)(c) and the master or owner is convicted of the offence in question, the sum so paid or amount made available under the security shall be applied as follows -

- (a) first in payment of any costs or expenses ordered by the Court to be paid by the master or owner; and
- (b) next in payment of any fine imposed by the Court,

and the balance shall be repaid to the person paying the sum, or giving the security.

Sums ordered to be paid leviable by distress on the ship.

62. - (1) Where the Court makes an order directing payment to be made of any seafarer's wages, fines or other sums of money, then, if the person directed to pay is the master or owner of the ship and the money directed to be paid is not paid in accordance with the order, the Court which made the order may direct the amount remaining unpaid to be levied by distress.

(2) Where a fine imposed by a Court in proceedings against the owner or master of a ship for an offence under this Act is not paid, or any costs or expenses ordered to be paid by him are not paid at 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 or arrestment and sale of the ship, her tackle, furniture and apparel.

(3) Where a person is convicted of an offence under this Act and the Court imposes a fine in respect of the offence, then if it appears to the Court that any person has incurred or will incur, expenses in making good any damage which is attributable to the offence, the Court may order the whole or part of the fine to be paid to that person for or towards defraying those

expenses.

Special Evidentiary Provisions

**Depositions
of persons
abroad
admissible.**

63. - (1) Where the evidence of any person is required in the course of any legal proceeding before a judge or magistrate in relation to the subject matter of the proceedings and it is proved that that person cannot be found in Jamaica, any deposition that he may have previously made at a place outside Jamaica in relation to the same subject matter shall, subject to subsection (2), be admissible in evidence in those proceedings.

(2) For a deposition to be admissible under subsection (1), in any proceedings, the deposition -

- (a) must have been taken on oath;
- (b) must have been taken before a justice or magistrate or a Jamaican consular officer in any other place;
- (c) must be authenticated by the signature of the justice, magistrate or officer taking it; and
- (d) must, if the proceedings are criminal proceedings, have been taken in
- (e) the presence of the accused,

and in a case falling within paragraph (d), the deposition shall be certified by the justice, magistrate or officer taking it to have been taken in the presence of the accused.

(3) No proof need be given of the signature or official character of the person appearing to have signed any such deposition and, in any criminal proceedings, a certificate stating that the deposition was taken in the presence of the accused shall, unless the contrary is proved, be evidence of that fact.

(4) This section also applies to proceedings before any person authorized by law or consent of the parties to receive evidence.

(4) Nothing in this section affects the admissibility in evidence of depositions under any other enactment or the practice of the Court.

**Admissibility
in evidence
and inspection
of certain
documents.**

64. - (1) The following documents shall be admissible in evidence and, when in the custody of the Director shall be open to public inspection -

- (a) documents purporting to be submissions to or decisions by the

Registrar of Seafarers or proper officers under section 85 of the *Shipping Act*;

- (b) the official log book of any ship kept under section 128 of the *Shipping Act* and, without prejudice to section 390(2) of the *Shipping Act*, any document purporting to be a copy of an entry therein and to be certified as a true copy by the master of the ship;
- (c) crew agreements, lists of crews made under section 129 of the *Shipping Act* and notices given under Part V of additions to or changes in crew agreements and lists of crews;
- (d) returns or reports under section 302 of the *Shipping Act*; and
- (e) documents transmitted to the Director under section 396 of the *Shipping Act*.

(2) A certificate issued under regulations made pursuant to section 99 of the *Shipping Act* shall be admissible in evidence.

**Admissibility
of documents
in evidence.**

65. - (1) Where a document is by this Act declared to be admissible in evidence the document shall, on its production from proper custody -

- (a) be admissible in evidence in any court or before any person having by law or consent of parties authority to receive evidence; and
- (b) subject to all just exceptions, be evidence of the matters stated in the document.

(2) A copy of, or extract from, any document so made admissible in evidence shall, subject to subsection (3), also be admissible in evidence and evidence of matters stated in the document.

(3) A copy of, or extract from, a document shall not be admissible by virtue of subsection (2), unless -

- (a) it is proved to be an examined copy or extract; or
- (b) it purports to be signed and certified as a true copy or extract by the officer to whose custody the original document was entrusted,

and that officer shall furnish the certified copy or extract to any person who applies for it at a reasonable time and pays such reasonable price as the Director determines.

(4) A person shall, on payment of such reasonable price as the Director

determines, be entitled to have a certified copy of any declaration or document a copy of which is made evidence by this Act.

(5) Where any officer having duties of certification under subsection (3), in relation to any document intentionally certifies any document as being a true copy or extract knowing that the copy or extract is not a true copy or extract he is guilty of an offence and liable -

- (a) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding thirty thousand dollars in United States currency; or
- (b) on conviction on indictment to a fine not exceeding sixty five thousand in United States currency, to imprisonment for a term not exceeding two years, or to both such fine and imprisonment.

Inspection and admissibility in evidence of copies of certain documents.

66. - (1) Where under any enactment a document is open to public inspection when in custody of the Director -

- (a) there may be supplied for a public inspection a copy of other reproduction of the document instead of the original; but
- (b) the original shall nevertheless be made available for public inspection if the copy or other reproduction is illegible.

(2) Where the Director destroys any document which has been sent to him under or by virtue of any enactment and keeps a copy or other reproduction of that document, then -

- (a) any enactment providing for that document to be admissible in evidence or open to public inspection; and
- (b) in the case of a document falling within subsection (1), that subsection,

shall apply to the copy or other reproduction as if it were the original.

(3) For the purposes of this section, and of every other provision of this Act that applies to documents in the custody of the Director, a copy is to be taken to be the copy of a document notwithstanding that it is taken from a copy or other reproduction of the original.

Proof, etc. of exemptions.

67. - (1) Where any exception, exemption, excuse or qualification applies in relation to an offence under this Act -

(a) it may be proved by the defendant;

(b) need not be specified or navigated in any information or complaint, and, if so specified or navigated, shall not require to be proved by the informant or complainant.

(2) This section applies in relation to an offence whether or no the exception, exemption, excuse or qualification is contained in the section creating the offence.

(3) No action shall lie against the Government or any public officer or other person appointed or authorized to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

SCHEDULE

[INSERT THE FULL TEXT OF THE CONVENTION,
INCLUDING THE ANNEXES]

MEMORANDUM OF OBJECTS AND REASONS

Ballast water is the water carried in ships to maintain their stability in the water when they are empty or partially laden. While ballast water is crucial to the safe operation of ships, studies have shown that when ballast water is taken on board, the organisms living in that water are also drawn in to the ballast tanks. Depending on the duration of the voyage and other factors, many of these organisms are then able to survive the journey and are subsequently released live into waters of the destination port when the ballast water is discharged. Thus, the ballast water serves as a vector for the transfer of species from one part of the world to another. Where this new area is outside of its natural geographic range, the species which has been transferred is commonly known as alien species, non-native species or non-indigenous species. If the environmental conditions in this new geographic area are suitable, the alien species may then not only survive, but may establish and spread, in many cases causing, or with the potential to cause, harm to the local environment, economy

or human health. Invasive alien species are now generally recognized as one of the greatest threats to biodiversity globally. They also have serious economic, environmental and health impacts and, as a result, place major constraints on development.

Jamaica is already experiencing the harmful effects of invasive alien species, given the frequency with which ships which have traveled outside of Jamaican waters dock at our ports. With no legislative framework in place to mitigate these harmful effects, Jamaica's fishing industry could eventually be decimated by invasive alien species. Other potential consequences are the spread of cholera, shell fish poisoning in humans and increased maintenance cost on the part of power generation plants due to the fouling of their intake cooling pipes by these species.

This Bill seeks to incorporate into domestic law the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004, to which Jamaica is a party. It will provide a comprehensive legislative regime for the regulation and management of ballast water within Jamaican waters and will also regulate ballast water management on Jamaican ships operating outside of Jamaican waters.

Michael Henry
Ministry of Transport and Works

