

LEGAL ASSESSMENT FOR BALLAST WATER MANAGEMENT: THE BAHAMAS

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Glossary

AFS Convention: International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001

Ballast Water¹: “water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship”

Ballast Water Management¹: “mechanical, physical, chemical and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of Harmful Aquatic Organisms and Pathogens within Ballast Water and Sediments”

BW: Ballast Water

BWM: Ballast Water Management

BWM Convention: International Convention for the Control and Management of Ships’ Ballast Water and Sediments

IAS: Invasive Alien Species

IMO: International Maritime Organization

MARPOL: International Convention for the Prevention of Pollution from Ships, London, 1973

RAC/REMPEITC-Caribe: Regional Marine Pollution Emergency, Information and Training Center Wider Caribbean

¹ International Convention for the Control and Management of Ships’ Ballast Water and Sediments. Article 1

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Introduction

The transfer of invasive alien species (IAS) through the ballast water tanks of ships has been identified as a significant vector that has resulted in detrimental economic, environmental and societal impacts worldwide². While shipping is an essential component of world trade that is responsible for approximately 90% of all internationally traded goods, the ballast water of conventional trading ships also has the potential of releasing organisms including larvae, algae, invertebrates, bacteria and viruses into new environments³⁴. These organisms then have the possibility to become invasive as they may not encounter natural inhibitors, allowing for rapid expansion and the ability to out-compete local flora and fauna.

The 2004 International Maritime Organization's (IMO) Convention on the Control and Management of Ships' Ballast Water and Sediments (BWM Convention) is an international instrument aimed at preventing trading ships from spreading harmful IAS through transfer of ballast water. The BWM Convention aims to reduce the transfer of invasive marine species through detailing a standard set of design and operational guidelines that will minimize transfer of species via shipping on a global scale. Under the BWM Convention, ships, port states and flag states all have responsibilities to ensure that there is management and control of ships' ballast water and sediments. The BWM Convention will enter into force on September 8, 2017, following the ratification by 51 states that represented 35% of world merchant shipping tonnage in September 2016.

This national legal assessment aims to assess ways of implementing the BWM Convention into national legislation in The Bahamas. The assessment reviews existing, relevant legislative frameworks in the nation, identifies deficiencies and barriers in the legislation, suggests steps for implementing the BWM Convention into national legislation and also suggests the nature of proposed legislation. The assessment also draws from the National Ballast Water Status Assessment⁵,

² WWF, 2009, Silent Invasion: The Spread of Marine Invasive Species via Ships' Ballast Water. http://www.wwf.de/fileadmin/fm-wwf/Publikationen-PDF/Study_Silent_Invasion.pdf

³ IMO 2008. International Shipping and World Trade - Facts and figures. International Maritime Organization Maritime Knowledge Centre November 2008. 37pp.

⁴ Ibrahim and El-naggar. 2012. Ballast water review: Impacts, treatments and management. *Middle-East Journal of Scientific Research*, 12(7): 976-984.

⁵ Thomas, A. 2016. National Ballast Water Status Assessment for The Bahamas

Economic Assessment for Ballast Water Management⁶ and National Strategy for Ballast Water Management⁷ that were developed for The Bahamas.

⁶ Thomas, A. 2016. Economic Assessment for Ballast Water Management in The Bahamas

⁷ Thomas, A. 2016. National Strategy for Ballast Water Management in The Bahamas

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Existing Relevant Legislative Frameworks

The Bahamas has a number of international, regional and national obligations related to ocean governance, marine resource management and environmental protection that are relevant to ballast water management (BWM). This section provides a review of existing regional agreements and programmes, international conventions that the country has ratified, case studies of how international conventions have been implemented and national legislation related to BWM.

The table below summarizes The Bahamas' major regional agreements and programmes concerning ocean governance and marine resource management along with the purpose of each agreement/programme.

TABLE 1: MAJOR MARINE RELATED REGIONAL AGREEMENTS

Agreement/Programme	Purpose
Caribbean Sea Commission	Established in 2008 by the Association of Caribbean States. Promotes and oversees sustainable use of the Caribbean Sea.
Caribbean Regional Fisheries Mechanism	Inaugurated in 2003. Inter-governmental organization aimed at sustainable use of region's fisheries and aquatic resources.
Regional Water Management and Action Plan (SAP) for the Wider Caribbean Region (WCR)	Provides a regional framework for the reduction of HAOP transfer according to the BWM Convention through enhancing regional cooperation and capacity in BWM matters.
Caribbean Memorandum of Understanding for Port State Control	A regional ship inspection program whereby foreign vessels entering a sovereign state's waters are boarded and inspected to ensure compliance with various major international maritime conventions.

The table below summarizes the major international conventions concerning the protection of the marine environment that The Bahamas has ratified along with the purpose of each convention.

TABLE 2: MAJOR MARINE RELATED INTERNATIONAL CONVENTIONS

International Convention	Purpose
International Convention for the Prevention of Pollution from Ships, London, 1973 [MARPOL]. Annexes I, II, III, V, VI	Main international convention covering prevention of pollution of the marine environment by ships from operational or accidental causes.

Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, London, 1978	Modifies various provisions of MARPOL and postpones entry into force of Annex II of the MARPOL Convention
United Nations Convention of the Law of the Sea, Montego Bay, 1982 [UNCLOS]	States shall take all measures necessary to prevent, reduce and control pollution of the marine environment resulting from the use of technologies under their jurisdiction.
Convention on Biological Diversity, Rio de Janeiro, 1992	States have a responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or area beyond the limits of national jurisdiction.
Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 2000	States shall ensure an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.
Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)	Ensure that international trade in wild animal specimens does not threaten the survival of the animals. Aims to reduce the endangered status of species.
Convention on Wetlands of International Importance especially as Waterfowl Habitats [RAMSAR]	States commit to the conservation and sustainable use of wetlands through local and national actions and international cooperation
Convention on Transboundary Movement of Hazardous Waste and their Disposal [Basel Convention], Basel, 1989	States shall take action to protect human health and the environment from detrimental effects of hazardous wastes.
Protocol on Pollution from Land-Based Sources and Activities	Parties should mitigate land based sources, in particular domestic waste and agricultural non-point sources, from polluting marine areas.
Stockholm Convention on Persistent Organic Pollutants, Stockholm, 2001	Aimed at eliminating or restricting the production and use of persistent organic pollutants.
International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS)	Aimed at preventing the introduction of toxic chemicals in the aquatic system, and ultimately the human food chain.
Food and Agriculture Organization (FAO) Code of Conduct for Responsible Fisheries and subsequent Technical Guidelines	Sets out principles and international standards of behavior for responsible practices with a view to ensuring the effective conservation, management and development of living aquatic resources, with due respect for the ecosystem and biodiversity.

3.1: IMPLEMENTATION OF INTERNATIONAL MARINE RELATED CONVENTIONS IN THE BAHAMAS

Case Study 1: MARPOL 1973/78

The Bahamas acceded to the International Convention for the Prevention of Pollution from Ships, London, 1973 with the exception of Annexes III, IV and V of the Convention on June 7, 1983. Entry into force took place on October 2, 1983. Accession to Annex V took place in 1990, accession to Annex III occurred in 1992 and ratification of Annex VI took place in 2001.

National legislation to implement MARPOL 1973/78 is in the form of the *Merchant Shipping (Oil Pollution) Chapter 275 Act*. The Act was given assent on November 29, 1976 and commencement took place on September 1, 1989. The Act was further amended in 1990, 1992, 1995, 2000, 2001 and 2009.

The *Merchant Shipping (Oil Pollution) Chapter 275 Act* governs oil pollution by ships and gives effect to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 and amendments made in 2000, collectively referred to as MARPOL 73/78. The Act states that the provisions of Annexes I, II, III and V of MARPOL 73/78 shall have the force of law in The Bahamas and provides details on discharge of oil into Bahamian waters, facilities in port for the disposal of oil residues, restrictions on transfer of oil, civil liability for oil pollution, enforcement and other relevant issues that are detailed in MARPOL 73/78. The First Schedule of the Act details specific provisions having effect in connection with MARPOL 73/78.

In addition to national legislation, The Bahamas Maritime Authority (BMA) has released a number of information bulletins in relation to MARPOL 1973/78 and the *Merchant Shipping (Oil Pollution) Chapter 275 Act* that provide guidance to Bahamas recognized organizations, Bahamas approved nautical inspectors, ship owners, managers and masters. These bulletins provide details on the application of MARPOL 1973/78 and practical guidance and include:

- Information Bulletin No. 75⁸ that provides guidance and instructions on MARPOL 73/78 Annex VI-Regulations for the Prevention of Air Pollution from Ships
- Information Bulletin No. 90⁹ that provides guidance on MARPOL Annex II-Carriage of Vegetable Oils
- Information Bulletin No. 94¹⁰ that provides guidance on the application of MARPOL Annex I
- Information Bulletin No. 125¹¹ that provides a record book to adhere to the provisions of MARPOL Annex VI

⁸ Bahamas Maritime Authority (2014) Information Bulletin No. 75: MARPOL 73/78 Annex VI- Regulations for the Prevention of Air Pollution from Ships (<http://www.bahamasmaritime.com/wp-content/uploads/2015/08/bulltn75.pdf>)

⁹ BMA (2007) Information Bulletin No. 90: MARPOL Annex II-Carriage of Vegetable Oils (<http://www.bahamasmaritime.com/wp-content/uploads/2015/08/90bulltn.pdf>)

¹⁰ BMA (2008) Information Bulletin No. 94: Application of MARPOL Annex I to Floating Production Storage and Offloading Facilities (FPSO) and Floating Storage Units (FSU) (<http://www.bahamasmaritime.com/wp-content/uploads/2015/08/94bulltn.pdf>)

¹¹ BMA (2010) Information Bulletin No. 126: MARPOL Annex VI Record Book for Fuel Oil and Ozone Depleting Substances (<http://www.bahamasmaritime.com/wp-content/uploads/2015/08/126bulltn.pdf>)

A national workshop that focused on the ratification, implementation and enforcement of the MARPOL Convention, Annexes I and V and on port reception facilities in The Bahamas was organized by RAC/REMPEITC-Caribe, funded by the IMO, hosted by the Ministry of Transport and Aviation of The Bahamas and held from November 13-15, 2012¹². The workshop provided stakeholders from both the public and private sector information about the background and contents of the MARPOL 1973/78 Convention and provided a forum for stakeholders to share ideas and concerns on how to better implement the Convention.

Case Study 2: AFS Convention

The Bahamas acceded to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS Convention) on January 30, 2008. The AFS Convention entered into force on September 17, 2008.

There is currently no national legislation to implement the AFS Convention in The Bahamas.

While there is currently no national legislation to implement the AFS Convention, BMA has released a number of information bulletins in relation to the Convention that provide guidance and instructions for ship-owners, managers, masters, Bahamas recognized organizations and Bahamas approved nautical inspectors. In particular, Information Bulletin No. 113¹³ provides guidance on the Convention as it applies to all registered vessel types regardless of tonnage. The bulletin provides details on requirements and handling of waste materials to ensure that vessels comply with the AFS Convention.

The table below summarizes national legislation related to Shipping Ports and Harbours and Agriculture and Fisheries and highlights any sections of Acts or Regulations that are relevant to BWM.

TABLE 3: NATIONAL LEGISLATION RELATED TO BWM

Legislation	Summary	Relevant Sections
Agriculture and Fisheries Chapter 242	The Agriculture and Fisheries Act details the supervision and development of the agriculture and fisheries industries.	None
Fisheries Resources (Jurisdiction and Conservation) Chapter 244	The Fisheries Resources (Jurisdiction and Conservation) Act details conservation and management of fishery resources within the limits of the Bahamian jurisdiction. The Act	None

¹² RAC/REMPEITC-Caribe (2012) Workshop Report on National Workshop on Ratification, Implementation and Enforcement of the MARPOL Convention, Annexes I and V. (<http://cep.unep.org/racrempeitc/activities/activities-2012/national-workshop-on-the-ratification-implementation-and-enforcement-of-marpol-bahamas-november-2012>)

¹³ BMA (2008) Information Bulletin No. 113: Anti-fouling Systems Convention (<http://www.bahamasmartime.com/wp-content/uploads/2015/08/113bulltn.pdf>)

	provides authorization to fisheries inspectors to stop, go on board and search any fishing vessel within the exclusive fishery zone if there is reason to believe that there have been violations of the Act.	
Abutments Chapter 270	The Abutments Act affords authority to proprietors of lots on Bay St to build out abutments into the harbor of Nassau.	None
Abutments Chapter 271	The Abutments (Out Islands) Act authorizes the building of abutments into ports and harbours located in the Out Islands by persons residing adjacent to ports and harbours.	None
Hatchet Bay Harbour Control Chapter 272	The Hatchet Bay Harbour Control Act established procedures for governing the harbor in Hatchet Bay, Eleuthera.	None
Harbour Dues Chapter 273	The Harbour Dues Act governs rates for harbor dues and other charges that are related to use of harbours within the country.	None
Merchant Shipping (Oil Pollution) Chapter 275	The Merchant Shipping (Oil Pollution) Act governs oil pollution by ships and gives effect to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 and amendments made in 2000, collectively referred to as MARPOL 73/78.	<p><u>Section 5(2):</u> <i>A person guilty of an offence under this section shall be liable on conviction on information to a fine not exceeding one hundred and twenty thousand dollars.</i></p> <p><u>Section 9(7):</u> <i>Nothing in this section shall be construed as requiring a port authority to allow untreated ballast water (that is to say ballast water which contains oil and has not been subjected to an effective process for separating the oil from the water) to be discharged into any oil reception facilities provided by, or by arrangement with, the authority and the Minister shall exercise his powers</i></p>

		<i>under subsection (5) of this section accordingly.</i>
Fuel Oil Chapter 276	The Fuel Oil Act governs the licensing of fuel supply stations for ships within the country. There	None
Boat Registration Chapter 277	The Boat Registration Act sets regulations for the registration of boats within the country. The Act is applicable to vessels less than 500 tons gross tonnage and operating within the waters of The Bahamas.	None
Commercial Recreational Watercraft Chapter 278A	The Commercial Recreational Watercraft Act governs the registration, licensing and control of commercial recreational watercraft.	None
Light Dues Chapter 280	The Light Dues Act establishes dues that are payable by ships passing through the waters of The Bahamas. The Act is applicable to all ships with the exception of ships belonging to the Government of The Bahamas and exempted ships.	None
Merchant Shipping (Maritime Claims Limitation of Liability) Chapter 281	The Merchant Shipping (Maritime Claims Limitation of Liability) Act, 1989 contains amendments to the law relating to carriage by sea and the liability of shipowners and salvors. The Act is related to the Convention on Limitation of Liability for Maritime Claims 1976 and concerns the loss and damage of property on board Bahamian ships.	None
Archipelagic Water and Maritime Jurisdiction Chapter 282	The Archipelagic Waters and Maritime Jurisdiction Act, 1993 details the boundaries of the territorial sea, archipelagic water, internal waters and exclusive economic zone for the country.	<i>Section 5(2): The passage of a foreign ship shall be deemed to prejudicial to the peace, good order or security of The Bahamas if, the ship while in the archipelagic waters or territorial sea of The Bahamas, engages in any of the following activities: (f) any act of</i>

		<p><i>pollution calculated or likely to cause damage or harm to The Bahamas, its resources or its marine environment.</i></p> <p><i><u>Section 6:</u> Where a foreign ship engages in any of the activities specific in any of the activities specified in subsections (2) and (3) of section 5 or prescribed under paragraph (i) of section 5(2), as the case may be, or where a law enforcement officer suspects on reasonable grounds that a foreign ship is engaged in any such activity, such law enforcement officer may in the course of his duty-(a) stop, board and search the ship for the purpose of carrying out enquiries and investigations; (b) without warrant or other process seize and detain the ship and bring it into a port of The Bahamas; (c) without warrant or other process arrest the captain and any person on board the ship whom he reasonably suspects to be participating in the activity of the ship which is deemed to be prejudicial to the peace, good order or security of The Bahamas. (2) Where a foreign ship is seized or detained or any person is arrested under this section, such ship or person shall forthwith be taken (a) to the nearest or most convenient place in The Bahamas and delivered into the custody of the most senior police officer; or (b) before a magistrate to be dealt with according to law. (3) Where the passage of a foreign ship is deemed to be prejudicial to the peace, good order or security of The Bahamas, the captain or other person in charge of such ship and any person participating in the activity of the ship which is deemed to be so</i></p>
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		<p><i>prejudicial, is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or imprisonment for a term of five years or both.</i></p>
<p>Merchant Shipping Act, 1976 (Ch. 268)</p>	<p>An Act to make provision for the registration of ships; for the control, regulation and orderly development of merchant shipping; to make provisions for the proper qualification of persons employed in the sea service; to regulate the terms and conditions of service of persons so employed; and for matters connected with and incidental to the forgoing.</p>	<p><u>Section 7 (1)</u>: <i>Every ship shall, before being registered, be surveyed by a surveyor, and her tonnage ascertained in accordance with the tonnage regulations, and the surveyor shall grant his certificate specifying the ship’s tonnage and build, and such other particulars descriptive of the identity of the ship as may from the time being be required by the Director, and such certificate shall be delivered to a registrar for registration.</i></p> <p><u>Section 172</u>: <i>(1) This section applies to all Bahamian ships, except pleasure craft. (2) The Director shall, by administrative action, assign to every ship to which this section applies an Annual Inspection Day. (3) The owner of every Bahamian ship to which this section applies shall cause the ship to be inspected by an Inspector appointed under section 169 within three months before or after the anniversary date of its assigned Annual Inspection Day.</i></p> <p><u>Section 283</u>: <i>(1) For the purpose of seeing that the provisions of this Act and regulations made or deemed to be made thereunder, or of any international convention, are duly observed and complied with, and for the effective carrying out of his powers and duties under this Act and such regulations, an inspector in the Bahamas may (a) go on board any ship and inspect the same or any part</i></p>

		<p><i>thereof, or any of the machinery, boats, equipment or articles on board thereof to which the said provisions apply; (b) by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine; (c) require answers or returns to be given or made by the master or any other member of the crew of a ship to any inquiries he is required or thinks fit to make; (d) require the production of any books, papers or documents; and (e) administer oaths for obtaining sworn testimony.</i></p> <p><i><u>Section 282:</u> (1) This Act and any regulations made or deemed to be made thereunder shall not, except as specifically provided, apply to Government ships.</i></p> <p><i><u>Section 289:</u> (1) Without prejudice to any other power in that behalf conferred by any other provision of this Act, the Minister may make regulations —(a) unless otherwise provided by this Act, prescribing the forms to be used, and the fees or sums to be paid, or the manner in which, or the person by whom, such fees or sums may be determined, in respect of any services performed or things done under or for the purposes of this Act or any regulations made or deemed to have been made thereunder; (b) providing for matters relating to the waiver of sovereignty over Bahamian ships registered under section 3(2) when the control of such a ship may, with the written approval of the original registrar, be committed by the owner thereof to the government of another country for requisition, purchase or charter in</i></p>
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		<i>time of war or other state of emergency of such country (c) prescribing anything which under this Act may be prescribed; (d) generally for carrying out the purposes of this Act.</i>
Merchant Shipping (Training, Certification, Manning and Watch-keeping) Regulations, 1998	Part II, in particular, of these Regulations relates to the training and certification requirements for masters and seamen employed in ships registered in The Bahamas other than fishing vessels and yachts.	These Regulations set out a number of training and certificates required of seamen on Bahamian vessels.
Merchant Shipping Regulations, 1976	These Regulations set out fees payable in respect of services performed by registrars, Nautical Inspectors and other officers of the Government of The Bahamas. Additionally, these Regulations provide the relevant forms applicable to the Act, i.e. Certificate of Survey.	None
Ports Authorities Act, 1962 (Ch. 269)	An Act to provide for the constitution and appointment of port authorities for New Providence and the Out Islands whereby the various ports and harbours of The Bahamas and the pilots and pilotage thereof and therein may be better regulated and controlled.	<i>Section 76: (1) Subject to the provisions of this Act, it shall be lawful for the Minister to make rules in respect of all or any of the following matters- (d) to prohibit the throwing into any harbour any anchor, except such as may be necessary to anchor any ship, or any ballast or any other foreign substance of what material or kind soever; (e) the disposal of ballast taken out of any ship...(2) Rules made under subsection (1) shall apply throughout The Bahamas or to such local areas as may be prescribed therein. (4) Any person who contravenes any rule made under paragraphs (a) to (f) of subsection (1) or under subsection (3) of this section</i>

		<i>shall be liable to a fine of four hundred dollars.</i>
Freeport Harbour Rules, 1968 (SECTION 75(3))	Rules that fall under the Ports Authorities Act, providing for the use and safety of Freeport Harbour.	<i>Section 6: The Port Director may give directions to the master of any vessel for all or any of the following purposes, that is to say —(c) for regulating the position or manner in which any vessel shall take in or discharge its cargo or any part thereof, or shall take in or land its passengers, or shall take in or deliver ballast within the Harbour;</i>
Pilotage (Port of Nassau) Rules, 1952 (SECTION 75(1))	Rules that fall under the Ports Authorities Act, governing Pilotage and ports in New Providence.	<i>Section 18: (1) No person shall —(a) throw ballast, dirt, garbage or rubbish of any kind into or in the vicinity of any part of the anchorage of New Providence; (b) empty, spill, throw or conduct through pipes or cause to be emptied, spilled, thrown or conducted any oil, grease or other substance whatsoever into the waters of the harbour or other anchorages of the Island of New Providence. (2) Any person committing a breach of rule 18(1) shall be liable on summary conviction to a penalty of one hundred dollars for every such breach.</i>
Sale of Merchandise from Vessels (Prohibition) Act, 1962 (Ch. 279)	An Act to prohibit the sale of merchandise in certain vessels for delivery in The Bahamas from such vessels.	None
The Bahamas Maritime Authority Act, 1995 (Ch. 283)	An Act to provide for the establishment of a body corporate to be known as The Bahamas Maritime Authority, and for the functions relating to that Authority and to make provision in respect of matters connected therewith or ancillary thereto.	<i>Section 5: It shall be the function of the Authority on behalf of the government of the Commonwealth of The Bahamas — (b) to regulate control and administer all matters related to merchant shipping as provided for under the Merchant Shipping Act or any other law.</i>

Water Skiing and Motor Boat Control Act, 1971 (Ch. 278)	An Act for the more effective control of water skiing and the driving of motor boats in coastal waters.	None
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This review of international, regional and national agreements, programmes and legislation reveals that there are a number of existing frameworks that have some relevance to BWM in The Bahamas. While the county has yet to ratify the BWM Convention, there are existing Acts and Regulations that are related to BWM. In the following section, overlaps and deficiencies between existing legislation and the BWM Convention are analyzed in further detail.

4

Overlaps and Deficiencies

The review of existing national legislation shows that there are Acts and Regulations that have some relevance to BWM. However, there is no existing legislation that comprehensively addresses all sections of the BWM Convention. In this section, overlaps and deficiencies between national legislation and the BWM Convention are reviewed.

4.1 OVERLAPPING LEGISLATION

The following table details overlaps between existing legislation and the BWM Convention. To show where overlap occurs, the specific sections of existing Acts and Regulations are related to the specific articles and regulations of the BWM Convention. As seen in the table, there are a few pieces of legislation that have some overlap with specific articles of the BWM Convention and there are others that provide authority for ballast water management in general. There is also some legislation that provides monetary fines that are payable by ships for pollution to the waters of The Bahamas. These existing fines may be utilized as penalties for ships that fail to manage ballast water.

TABLE 4: OVERLAPS BETWEEN EXISTING LEGISLATION AND BWM CONVENTION

Legislation	Relevant Section of Act/Regulation	Relevant Article/Regulation of BWM Convention
Merchant Shipping (Oil Pollution) Chapter 275	<i>Section 9(7): Nothing in this section shall be construed as requiring a port authority to allow untreated ballast water (that is to say ballast water which contains oil and has not been subjected to an effective process for separating the oil from the water) to be discharged into any oil reception facilities provided by, or by arrangement with, the authority and the Minister shall exercise his powers under subsection (5) of this section accordingly.</i>	No specific article but gives port authority jurisdiction over not allowing ballast water contaminated with oil to be discharged. Also sets a potential penalty for discharging BW that contains oil at \$120,000.
Archipelagic Water and Maritime Jurisdiction Chapter 282	<i>Section 5(2): The passage of a foreign ship shall be deemed to prejudicial to the peace, good order or security of The Bahamas if, the ship while in the archipelagic waters or territorial sea of The Bahamas, engages in any of the following</i>	No specific article but sets a potential penalty for lack of ship BWM of \$10,000 or imprisonment of 5 terms or both. The Act also sets guidelines about the inspection of ships.

	<p><i>activities: (f) any act of pollution calculated or likely to cause damage or harm to The Bahamas, its resources or its marine environment.</i></p> <p><u>Section 6:</u> <i>Where a foreign ship engages in any of the activities specific in any of the activities specified in subsections (2) and (3) of section 5 or prescribed under paragraph (i) of section 5(2), as the case may be, or where a law enforcement officer suspects on reasonable grounds that a foreign ship is engaged in any such activity, such law enforcement officer may in the course of his duty-(a) stop, board and search the ship for the purpose of carrying out enquiries and investigations; (b) without warrant or other process seize and detain the ship and bring it into a port of The Bahamas; (c) without warrant or other process arrest the captain and any person on board the ship whom he reasonably suspects to be participating in the activity of the ship which is deemed to be prejudicial to the peace, good order or security of The Bahamas. (2) Where a foreign ship is seized or detained or any person is arrested under this section, such ship or person shall forthwith be taken (a) to the nearest or most convenient place in The Bahamas and delivered into the custody of the most senior police officer; or (b) before a magistrate to be dealt with according to law. (3) Where the passage of a foreign ship is deemed to be prejudicial to the peace, good order or security of The Bahamas, the captain or other person in charge of such ship and any person participating in the</i></p>	
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	<p><i>activity of the ship which is deemed to be so prejudicial, is guilty of an offence and liable on summary conviction to a fine of ten thousand dollars or imprisonment for a term of five years or both.</i></p>	
<p>Merchant Shipping Act, 1976 (Ch. 268)</p>	<p><u>Section 7 (1)</u>: <i>Every ship shall, before being registered, be surveyed by a surveyor, and her tonnage ascertained in accordance with the tonnage regulations, and the surveyor shall grant his certificate specifying the ship’s tonnage and build, and such other particulars descriptive of the identity of the ship as may from the time being be required by the Director, and such certificate shall be delivered to a registrar for registration.</i></p> <p><u>Section 172</u>: <i>(1) This section applies to all Bahamian ships, except pleasure craft. (2) The Director shall, by administrative action, assign to every ship to which this section applies an Annual Inspection Day. (3) The owner of every Bahamian ship to which this section applies shall cause the ship to be inspected by an Inspector appointed under section 169 within three months before or after the anniversary date of its assigned Annual Inspection Day.</i></p>	<p><u>Article 7</u>: <i>Ships of 400 gross tonnage and above to which the Convention applies, excluding floating platforms, FSUs and FPSOs shall be subject to surveys in accordance with regulation E-1 of the Annex to the Convention. In this regard, emphasis is drawn on <u>Regulation E-1 1.1</u>: An initial survey before the ship is put in service or before the Certificate required under regulation E-2 or E-3 is issued for the first time. The survey shall verify that the Ballast Water Management plan required by regulation B-1 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of the Convention. and the survey shall be endorsed on the Certificate showing that Ballast Water Management on the ship complies with the Annex of the Convention.</i></p> <p><u>Regulation E-1 1.4</u>: <i>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 materials or processes associated with the Ballast Water Management plan required by</i></p>

	<p><u>Section 283:</u> (1) For the purpose of seeing that the provisions of this Act and regulations made or deemed to be made thereunder, or of any international convention, are duly observed and complied with, and for the effective carrying out of his powers and duties under this Act and such regulations, an inspector in the Bahamas may (a) go on board any ship and inspect the same or any part thereof, or any of the machinery, boats, equipment or articles on board thereof to which the said provisions apply; (b) by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine; (c) require answers or returns to be given or made by the master or any other member of the crew of a ship to any inquiries he is required or thinks fit to make; (d) require the production of any books, papers or documents; and (e) administer oaths for obtaining sworn testimony.</p> <p><u>Section 282:</u> (1) This Act and any regulations made or deemed to be made thereunder shall not, except as specifically provided, apply to Government ships.</p> <p>289. (1) Without prejudice to any other power in that behalf conferred by any other provision of this Act, the Minister may make regulations (a) unless otherwise provided by this Act, prescribing the forms to be used, and the fees or sums to be paid, or the manner in which, or the person by whom, such fees or sums</p>	<p>regulation B-1 to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which the ship is intended. Such annual surveys shall be endorsed on the Certificate issued under regulation E-2 or E-3.</p> <p><u>Article 3(2)(e):</u> This Convention shall not apply to: 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. However, each Party shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities of such ships owned or operated by it, that such ships act in a manner consistent, so far as is reasonable and practicable, with this Convention.</p> <p>No specific article but allows the Minister to make regulations that can cover BWM.</p>
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	<p>may be determined, in respect of any services performed or things done under or for the purposes of this Act or any regulations made or deemed to have been made thereunder; (b) providing for matters relating to the waiver of sovereignty over Bahamian ships registered under section 3(2) when the control of such a ship may, with the written approval of the original registrar, be committed by the owner thereof to the government of another country for requisition, purchase or charter in time of war or other state of emergency of such country. (c) prescribing anything which under this Act may be prescribed; (d) generally for carrying out the purposes of this Act.</p>	
<p>Merchant Shipping (Training, Certification, Manning and Watch-keeping) Regulations, 1998</p>	<p>These Regulations set out a number of training and certificates required of seamen on Bahamian vessels.</p>	<p><i>Reg. B-6: Officers and crew shall be familiar with their duties in the implementation of BWM particular to the ship on which they serve and shall, appropriate to their duties, be familiar with the ship’s BWM plan.</i></p>
<p>Ports Authorities Act, 1962 (Ch. 269)</p>	<p><u>Section 76:</u> (1) Subject to the provisions of this Act, it shall be lawful for the Minister to make rules in respect of all or any of the following matters- (d) to prohibit the throwing into any harbour any anchor, except such as may be necessary to anchor any ship, or any ballast or any other foreign substance of what material or kind soever; (e) the disposal of ballast taken out of any ship...(2) Rules made under subsection (1) shall apply throughout The Bahamas or to such local areas as may be prescribed therein. (4) Any person</p>	<p>No specific article but The Miscellaneous Provisions of the Act (Part XI) allows the Minister to make rules in respect of a number of matters, in particular the disposal of ballast taken out of any ship, as well as a fine in contravention thereof.</p>

	<i>who contravenes any rule made under paragraphs (a) to (f) of subsection (1) or under subsection (3) of this section shall be liable to a fine of four hundred dollars.</i>	
Freeport Harbour Rules, 1968 (SECTION 75(3))	<u>Section 6:</u> <i>The Port Director may give directions to the master of any vessel for all or any of the following purposes, that is to say —(c) for regulating the position or manner in which any vessel shall take in or discharge its cargo or any part thereof, or shall take in or land its passengers, or shall take in or deliver ballast within the Harbour;</i>	No specific article but provisions made for Port Director of Freeport Harbour to give directions in respect of ballast water.
Pilotage (Port of Nassau) Rules, 1952 (SECTION 75(1))	<u>Section 18:</u> <i>(1) No person shall —(a) throw ballast, dirt, garbage or rubbish of any kind into or in the vicinity of any part of the anchorage of New Providence; (b) empty, spill, throw or conduct through pipes or cause to be emptied, spilled, thrown or conducted any oil, grease or other substance whatsoever into the waters of the harbour or other anchorages of the Island of New Providence. (2) Any person committing a breach of rule 18(1) shall be liable on summary conviction to a penalty of one hundred dollars for every such breach.</i>	No specific article but provides a penalty of one hundred dollars for throwing ballast in New Providence
The Bahamas Maritime Authority Act, 1995 (Ch. 283)	<u>Section 5:</u> <i>It shall be the function of the Authority on behalf of the government of the Commonwealth of The Bahamas — (b) to regulate control and administer all matters related to merchant shipping as provided for under the Merchant Shipping Act or any other law.</i>	No specific article but potential given in respect of the provision to regulate, control and administer all matters related to merchant shipping.

4.2 DEFICIENCIES IN LEGISLATION

The following table details deficiencies between existing Bahamian legislation and the BWM Convention. The articles and regulations of the BWM Convention are summarized and any potential existing relevant Bahamian legislation relevant to each area is given. As seen in the table, the majority of articles and regulations of the BWM Convention are not directly covered by existing Bahamian legislation.

TABLE 5: DEFICIENCIES BETWEEN EXISTING LEGISLATION AND BWM CONVENTION

Article/Regulation of BWM Convention	Summary of Article	Potential Existing Relevant Bahamian Legislation
Article 1	Provides definitions of key terms within the Convention	None
Article 2	General obligations for Parties to the Convention	None
Article 3	Application of the Convention including which ships the Convention applies to	Merchant Shipping Act, 1976 (Ch. 268)
Article 4	Each Party shall control the transfer of harmful aquatic organisms and ships' ballast water and sediments through compliance with the Convention	None
Article 5	Provides obligations for the provision of sediment reception facilities	None
Article 6	Provides guidance for the promotion and facilitation of scientific and technical research and monitoring	None
Article 7	Parties shall ensure survey and certification of ships	Merchant Shipping Act, 1976 (Ch. 268)
Article 8	Information on how violations of the Convention should be addressed	None
Article 9	Details on inspection of ships to which the Convention applies	Merchant Shipping Act, 1976 (Ch. 268)
Article 10	Co-operation between Parties on the detection of violations and control of ships	None
Article 11	Details who should receive notification of control actions taken	None
Article 12	BWM management should not cause any undue delay to ships	None
Article 13	Parties will provide technical assistance, co-operation and regional co-operation	None
Article 14	Details on how and to whom communication of information should be provided	None
Article 15	Information on how Parties shall settle disputes between themselves	None

Article 16	Nothing in the Convention shall prejudice the rights and obligations of any State under customary international law	None
Article 17	Details on signature, ratification, acceptance, approval and accession	None
Article 18	Details on when the Convention will enter into force	None
Article 19	Details on how the Convention may be amended	None
Article 20	Details on how the Convention can be denounced by Parties	None
Article 21	Details on how the Convention shall be deposited	None
Article 22	Languages of the Convention	None
Regulation A-1	General provisions of the regulations including definitions	None
Regulation A-2	General applicability of the Convention	None
Regulation A-3	Exceptions to the Convention regarding the uptake and discharge of BW	None
Regulation A-4	Exemptions of particular ships from the Convention	None
Regulation A-5	Details on equivalent compliance	None
Regulation B-1	Details of BWM plans required for ships	None
Regulation B-2	Details of BW record books required for ships	None
Regulation B-3	Details of BWM for ships	None
Regulation B-4	Details of BW exchange in order to meet standards	None
Sediment Management for Ships	Details on how ships shall management sediment	None
Regulation B-6	Duties of officers and crews	Merchant Shipping (Training, Certification, Manning and Watch-keeping) Regulations, 1998
Regulation C-1	Additional measures that Parties may take beyond the Convention	None
Regulation C-2	Warnings concerning BW uptake in certain areas and related flag state measures	None
Regulation C-3	Details on communication of information	None
Regulation D-1	Details on the BW exchange standard	None
Regulation D-2	Details on the BW performance standard	None
Regulation D-3	Approval requirements for BWM systems	None

Regulation D-4	Details on prototype BW treatment technologies	None
Regulation D-5	Reviews of standards by the organization	None
Regulation E-1	Details on ship surveys	Merchant Shipping Act, 1976 (Ch. 268)
Regulation E-2	Issuance or endorsement of BW certificates	None
Regulation E-3	Issuance or endorsement of a BW certificate by another Party	None
Regulation E-4	Form of the BW certificate	None
Regulation E-5	Duration and validity of the BW certificate	None

5

Suggested Nature of Proposed Legislation

The Merchant Shipping Act, 1976 (Ch. 268) has some sections and Regulations related to BWM as detailed in Tables 4 and 5. The Merchant Shipping (Oil Pollution) Act and The Bahamas Maritime Authority Act, 1995 (Ch. 283) also provide some authority for the regulation of ballast water management. However, the majority of articles within the BWM Convention are not covered by existing legislation as seen in Table 5. Existing legislation is therefore currently inadequate to address the requirements of the BWM Convention. In order to address the inadequacy of existing legislation, there are three strategies that can be taken that are detailed below.

5.1 STRATEGY 1

Draft amendments to existing Acts

Existing legislation, in particular the Merchant Shipping Act, 1976 (Ch. 268), can be amended. The Act would need to be significantly amended to include all issues related to BWM including requirements for international ships berthing in The Bahamas, requirements for port facilities and penalties for failure to adhere to requirements.

5.2 STRATEGY 2

Draft new Act to govern BWM

A Ballast Water Management Act would need to be drafted to include all issues specifically related to ballast water. The development of this Act would not require amendments to be made to existing legislation. This Act would be focused solely on ballast water pollution similar to the Merchant Shipping (Oil Pollution) Act that specifically addresses oil pollution and not other forms of pollution from ships.

5.3 STRATEGY 3

Draft new comprehensive marine environmental protection regulations

A comprehensive marine environmental protection regulation would address ballast water pollution as part of a larger framework of marine environmental protection. This legislation should consider all threats to marine biodiversity including ballast water. This strategy would require significant inter-agency cooperation in order to ensure the protection of biodiversity from a number of threats, including ballast water.

5.4 RECOMMENDATION FOR PROPOSED LEGISLATION

Strategy 2: Draft new Act to govern BWM

The development of a new BWM Act would follow existing practices in the country of developing new Acts to implement international agreements. Just as the Merchant Shipping (Oil Pollution) Act was passed in order to enact the MARPOL Convention, a new BWM Act would be focused on BWM and provide comprehensive legislation that covers all articles and regulations of the

BWM Convention. This would be a central piece of legislation where all regulations governing BWM would be found.

6

Steps for Implementing BWM into National Legislation

Before the implementation of a new BWM Act, the Ministry of Transportation and Aviation intends to develop and implement a national BWM policy. The BWM policy will take into account the requirements of the BWM Convention as they relate to both port and flag states. The development of the BWM policy must be established in conjunction with a number of stakeholders including Ministry of Environment and Housing and Ministry of Agriculture and Fisheries. Details on the stakeholders involved and requirements of port and flag states in developing a national BWM policy can be found in the National Strategy for Ballast Water Management: The Bahamas¹⁴.

Following the implementation of a national BWM policy and accession to the BWM Convention, steps can then be made to enact the BWM Act. Relevant Ministries and Departments including: (i) Ministry of Transportation and Aviation, in particular Bahamas Maritime Authority and the Port Department (ii) Ministry of Environment and Housing and (iii) Ministry of Agriculture and Fisheries, will review the proposed legislation in conjunction with the Office of the Attorney General.

Upon completion of the review, the BWM Act will be provided to the potential responsible Minister of the Government. This Minister of the Government would introduce the proposed legislation in Cabinet to be followed by introduction as a Bill in Parliament (the “BWM Bill”). Article 52(2) of the Bahamas Constitution empowers Parliament to make laws by the passing of Bills.

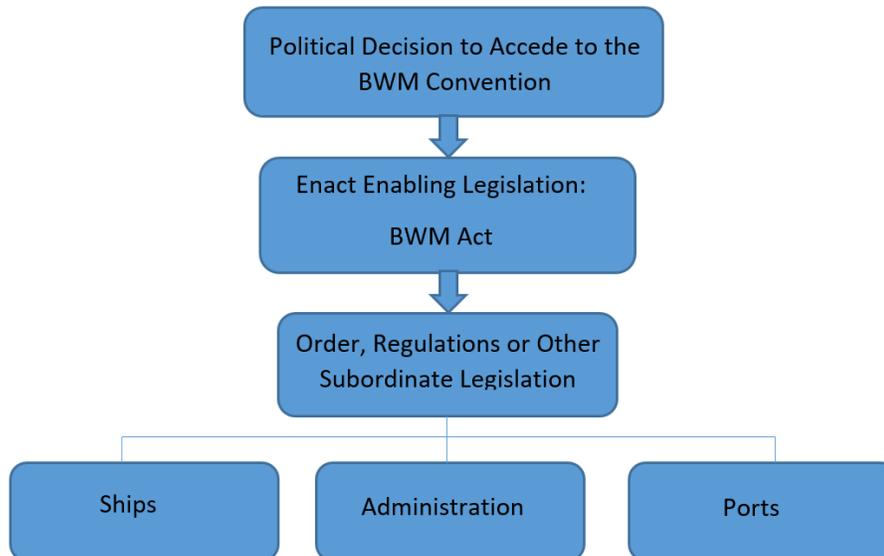
The BWM Bill would have to go through a number of readings in Parliament and would subsequently be debated by the Members of Parliament. If the BWM Bill is supported by a majority of Members of Parliament, the Speaker would then order the BWM Bill passed and it would be sent to the Senate for that Chamber’s consent.

In the Senate, the BWM Bill would also be read a number of times and debated. Once there is a majority of Senators in favor of the BWM Bill it would then be passed.

The BWM Bill would then be sent to the Governor General for assent, after which the BWM Bill would be referred to as the BWM Act, and would be published in the Gazette.

¹⁴ Thomas, A. 2016. National Strategy for Ballast Water Management in The Bahamas

FIGURE 1: INTEGRATING THE BWM CONVENTION INTO NATIONAL LAW¹⁵



¹⁵ Adapted from: IMO (2015) Second draft of the manual entitled: "Ballast Water Management-How to do it"

7

Draft BWM Act

The following is the draft Ballast Water Management Bill, 2017 (the “BWM Bill”), which provides a legal framework to implement and enforce the BWM Convention into national law in The Bahamas. The Model Ballast Water Management Act (the “Model Act”) was used as a foundation for the BWM Bill, along with provisions in existing national maritime legislation in The Bahamas such as the Merchant Shipping Act and the Merchant Shipping (Oil Pollution) Act.

One significant highlight for the BWM Bill is the incorporation of specific roles to administer and enforce the BWM Convention in The Bahamas, namely, the Government of The Bahamas, the Minister in charge of Maritime Affairs, the Director of the Bahamas Maritime Authority and the Bahamas Maritime Authority as a body. However, please note that these roles are subject to change after further review is made by all stakeholders responsible for developing a BWMt policy in The Bahamas.

BALLAST WATER MANAGEMENT BILL, 2017

ARRANGEMENT OF SECTIONS

Section

PART I - PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application

PART II – SURVEYS AND CERTIFICATES

4. Surveys
5. Nominated surveyors and recognised organisations
6. Issue of Certificate
7. Issue of Certificate upon request by a Convention member state
8. Form of Certificate
9. Corrective action
10. Report of accidents and defects
11. Maintenance requirements
12. Duration and validity of certificate
13. Transfer of flag

PART III - CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

14. Discharge of ballast water controlled
15. Exception from control
16. Exemptions
17. Equivalence
18. Ballast Water Management plan
19. Ballast Water Record Book
20. Ballast Water Management for ships
21. Ballast Water Exchange
22. Sediment Management for Ships
23. Duties of officers and crew
24. Ballast Water Management Systems
25. Additional measures in certain areas
26. Warnings concerning Ballast Water uptake in certain areas
27. Reception facilities

PART IV – SUPPLEMENTAL

28. Inspection of ships which are not Bahamian ships
29. Detection of violations and control of ships
30. Notification of control actions
31. Undue delay to ships
32. Service of documents on shipowners, application of fines, etc.
33. Restriction on jurisdiction over offences outside The Bahamas
34. Suspension of proceedings at flag State request
35. Offences and penalties
36. Protection of Government and public officers
37. Power to amend Act and make regulations and orders

BALLAST WATER MANAGEMENT BILL, 2017

A BILL FOR AN ACT TO GIVE EFFECT TO THE INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS, 2004, AND FOR PURPOSES RELATED THERETO.

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the Ballast Water Management Act, 2017.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette, and different dates may be so appointed for different provisions.

2. Interpretation.

- (1) In this Act –

“**Annex**” means the Annex to the Convention;

“**Bahamian waters**” means any waters in which The Bahamas has jurisdiction in respect of the protection and preservation of the marine environment under international law;

“**Ballast Water**” means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

“**Ballast Water Management**” means mechanical, physical, chemical and biological processes, either singularly or in combination, to remove, render harmless or 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;

“**the Director**” means the Director of Maritime Affairs appointed under The Bahamas Maritime Authority Act;

“**FPSO**” means a floating production, storage and off-loading units production;

“**FSO**” means a floating storage and offloading unit; “**FSU**” means Floating storage units;

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

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

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

“**IMO**” means the International Maritime Organization;

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

“**Organization**” means the International Maritime Organization; “**Party**” means a State which is a Party to the Convention; “**Sediments**” means matters settled out of Ballast Water within a ship;

“**Ship**” means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FSUs and FPSOs;

“**Shipping Notice**” means a Notice entitled as such published by the Government, and includes any amendment which it considers relevant from time to time.

(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.

3. Application.

(1) Except as expressly provided otherwise in this Act, this Act shall apply to:

(a) ships entitled to fly the flag of The Bahamas;

- (b) ships not entitled to fly the flag of The Bahamas but which operate under the authority of The Bahamas; and
 - (c) other ships when in port and offshore terminals of Bahamian waters.
- (2) This Act shall not apply to:
- (a) ships not designed or constructed to carry Ballast Water;
 - (b) Bahamian ships which only operate in Bahamian waters,

unless the Minister determines that the discharge of Ballast Water from such ships would impair or damage the environment, human health, property or resources, or those of adjacent or other States;
 - (c) other ships which only operate in Bahamian waters, subject to the authorization of the Minister for such exclusion. The Minister shall not grant such authorization if doing so would impair or damage the environment, human health, property or resources, or those of adjacent or other States. If the Minister refuses such authorization, he shall notify the Government of the ship concerned that this Act applies to such ship;
 - (d) ships which only operate in Bahamian waters and on the high seas, unless the Minister determines that the discharge of Ballast Water from such ships would impair or damage the environment, human health, property or resources, or those of adjacent or other States. The exception contained in this sub-paragraph does not apply to ships not granted an authorization pursuant to sub-paragraph (c);
 - (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; and
 - (f) permanent Ballast Water in sealed tanks on ships, that is not subject to discharge.

PART II – SURVEYS AND CERTIFICATES

4. Surveys.

- (1) Bahamian ships of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPSOs, shall be subject to the surveys specified in Regulation E-1 of the Annex. Surveys shall be endorsed on the Certificate as required by the Convention.
- (2) The Minister, the Director or The Bahamas Maritime Authority shall establish

appropriate measures for ships that are not subject to the provisions of paragraph 1 in order to ensure that the applicable provisions of this Act are complied with.

5. Nominated surveyors and recognized organisations.

- (1) Surveys of ships for the purpose of enforcement of the provisions of this Act shall be carried out by surveyors appointed by the Minister.
- (2) The Minister 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, and the specifications adopted by the Organization.
- (3) The Minister, 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 Government shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

6. Issue of certificate.

- (1) A Certificate shall be issued, after successful completion of a survey in accordance with section 4 to any Bahamian ship to which that section applies.
- (2) The Certificate shall be issued either by the Director, The Bahamas Maritime Authority or by any person or organisation duly authorised by the Government and in every such case the Government shall assume full responsibility for the Certificate.

7. Issue of certificate upon request by Convention member state.

- (1) The Director 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 authorise 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 has 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 Bahamian ship at the request of

the Government, shall have the same force and receive the same recognition in The Bahamas 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.

8. Form of certificate.

A Certificate shall be in the form prescribed in the Convention.

9. Corrective action.

When the Director, 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 the Director, surveyor or organization shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organization shall be notified immediately, and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of that State shall be notified immediately.

10. Report of accidents and defects.

- (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 Director, The Bahamas Maritime Authority or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by 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.

11. Maintenance requirements.

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 the 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 Minister, except the direct replacement of such equipment or fittings.

12. Duration and Validity of Certificate.

The duration and validity of the Certificate shall be that specified in Regulation E-5 of the Annex.

13. Transfer of flag.

- (1) Upon transfer of a Bahamian ship to the flag of another Party, where such State so requests within three months after the transfer has taken place, the Government 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 Bahamian flag, a new Certificate shall only be issued when the Director 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

14. Discharge of Ballast Water controlled.

Except where expressly provided otherwise in this Act, the owner and 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.

15. Exceptions from control.

The requirements of section 14, or any measures adopted, whether pursuant to section 24 or otherwise, shall not apply in the circumstances set out in Regulation A-3 of the Annex.

16. Exemptions.

- (1) Subject to subsections (2) and (3) the Minister may grant exemptions, in relation to Bahamian 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 Minister 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.

17. Equivalence

- (1) The Director shall establish measures which provide equivalent compliance with the requirements of this Act for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres. In establishing such measures the Director shall take into account IMO 'Guidelines for Ballast Water Management Equivalent Compliance (G3).
- (2) Measures established under this section shall be published in a Shipping Notice.
- (3) 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.

18. Ballast Water Management Plan.

Every ship shall have on board and implement a Ballast Water Management plan, in accordance with Regulation B-1 of the Annex.

19. Ballast Water Record Book.

- (1) Every ship shall have on board a Ballast Water record book complying with Regulation B-2 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) 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.
- (4) The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

20. Ballast Water Management for Ships.

Ships shall conduct Ballast Water Management in accordance with Regulation B-3 of the Annex.

21. Ballast Water Exchange.

A ship conducting Ballast Water exchange to meet the standard in Regulation D-1 of the Annex shall do so in accordance with Regulation B-3 of the Annex.

22. Sediment Management for Ships.

All ships shall remove and dispose of Sediments in accordance with Regulation B-5 of the Annex.

23. Duties of officers and crew.

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 particular to the ship on which they serve and are, appropriate to their duties, be familiar with the ship's Ballast Water Management plan.

24. Ballast Water Management Systems.

All ballast water management systems shall be in accordance with Regulation D-3 of the Annex.

25. Additional measures in certain areas.

- (1) The Government may, with the approval of the Organisation and by notice published in a Shipping Notice specify measures additional to those in sections 18 to 22 which they consider necessary to prevent, reduce or eliminate the transfer of Harmful Aquatic Organisms and Pathogens through ships' Ballast Water and Sediments. In specifying such measures the Government shall take into account Guidelines developed by the Organisation.
- (2) The Shipping Notice shall –
 - (a) specify the additional measures;
 - (b) list all appropriate services, including notification to mariners of 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 Government may, by notice published in a Shipping Notice, waive these additional measures for a period of time or in specified circumstances.

26. Warnings concerning Ballast Water uptake in certain areas.

- (1) The Government shall by Shipping Notice/Notice to Mariners notify mariners of areas in Bahamian waters where ships should not uptake Ballast Water due to known

conditions. Such notices shall include the precise coordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. In particular, warnings may be issued for areas:

- (a) known to contain outbreaks, infestations, or populations of Harmful Aquatic Organisms and Pathogens (e.g., toxic algal blooms) which are likely to be of relevance to Ballast Water uptake or discharge;
 - (b) near sewage outfalls; or
 - (c) where tidal flushing is poor or times during which a tidal stream is known to be more turbid.
- (2) In addition to such Notices, the Government shall notify the Organization and any potentially affected coastal States of any areas identified in subsection (1) and the time period such warning is likely to be in effect. The notice to the Organization and any potentially affected coastal States shall include the precise co-ordinates of the area or areas, and, where possible, the location of any alternative area or areas for the uptake of Ballast Water. The notice shall include advice to ships needing to uptake Ballast Water in the area, describing arrangements made for alternative supplies. The Government shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

27. Reception facilities.

- (1)
 - (a) Every 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.
 - (b) A port authority within whose port cleaning or repair of ballast tanks is undertaken shall notify the Government of this.
- (2) The Minister shall designate ports for the purposes of Article 5 of the Convention.
- (3) The Minister may make regulations –
 - (i) prescribing criteria for determining the adequacy and accessibility of reception facilities at ports and terminals designated in accordance with subsection (2), 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
 - (ii) generally for implementing the requirements of the Convention relating to reception facilities for Ballast Water or Sediments.

PART IV – SUPPLEMENTARY

28. Inspection of ships which are not Bahamian ships.

- (1) A ship which is not a Bahamian ship to which this Act applies may, in any port or offshore terminal, be subject to inspection by officers duly authorised by the Minister for the purpose of determining whether the ship is in compliance with Act. Except as provided in subsection (2) below, any such inspection is limited to:
 - (a) verifying that there is onboard a valid Certificate, which, if valid shall be accepted; and
 - (b) inspection of the Ballast Water record book, and/ or
 - (c) a sampling of the ship's Ballast Water, carried out in accordance with the guidelines by the Organization (if any). However, the time required to analyse 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.

29. Detection of violations and control of ships.

- (1) If a ship which is not a Bahamian ship which is operating in a Bahamian port or offshore terminal, is found to have contravened this Act, then, without prejudice to any penalties provided elsewhere in this Act, or any action described in section 28 the Minister may take steps to warn, detain, or exclude the ship. The Minister, however, may grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human

health, property or resources.

- (2) If the sampling described in section 28(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 Minister 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 Bahamian 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. The report of such investigation shall be sent to the State requesting it and to the competent authority of the Government of the ship concerned so that appropriate action may be taken.

30. Notification of control actions.

- (1) If an inspection conducted pursuant to section 28 indicates a violation of this Act, the Government shall notify the ship. The Government shall forward a report to the Government of the ship concerned, including any evidence of the violation.
- (2) In the event that any action is taken in relation to a ship pursuant to section 28(3) or section 29(1) or (2), the officer carrying out such action shall forthwith inform, in writing, the Government 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. In addition, the recognized organization responsible for the issue of certificates shall be notified.
- (3) The Government 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 to section 28(3) or section 29(1) or (2) or if the ship has been allowed to proceed to the next port of call.

31. Undue delay of ships.

- (1) The Minister and the Government shall make every possible effort to avoid undue detaining or delaying of a ship under sections 29.
- (2) A ship that is unduly detained or delayed under sections 28, 29 or 30 shall be entitled to compensation for any loss or damage suffered.

32. Service of documents on shipowners, application of fines, etc.

- (1) Any document required or authorised, by virtue of any statutory provision, to be served on a shipowner 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 authorised 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 3 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 is paid to the Government 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 is given to the Government, 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 Government shall repay any 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 a 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 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.
- (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 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.
- (7) This section applies without prejudice to the application of section 32.

33. Restriction on jurisdiction over offences outside The Bahamas.

- (1) No proceedings for an offence of contravening any provision of this Act by a ship not being a Bahamian 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 requests that proceedings be taken; or
 - (b) the discharge has caused or is likely to cause pollution in the internal waters, territorial sea, or exclusive economic zone of The Bahamas.
- (2) Where proceedings for an offence of contravening any provision of this Act by a ship not being a Bahamian 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 Government 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 the ship is not a Bahamian ship; and

- (b) the discharge took place outside The Bahamas, its internal waters; and
- (c) the ship was in a port in The Bahamas 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.

34. Suspension of proceedings at flag State request.

- (1) This section relates to an alleged offence or contravention of any provision of this Act by a ship which is not a Bahamian ship, in relation to a discharge outside The Bahamas or its territorial seas.
- (2) (a) Any proceedings for such an offence shall be stayed if the Court is satisfied that the flag State has instituted proceedings corresponding to the proceedings in The Bahamas in respect of the discharge, within six months of the institution of proceedings in The Bahamas.
 - (b) Paragraph (a) above does not apply-
 - (i) where the discharge resulted in damage in excess of one hundred thousand dollars to The Bahamas; or
 - (ii) the Government 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 Government 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.

35. Offences and penalties.

- (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 conviction on information to a fine not exceeding two hundred thousand dollars.
- (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.

36. Protection of Government and public officers.

No suit shall be maintained against the Government, the Minister, the Director, The Bahamas Maritime Authority or any public officer or other person appointed or authorised 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.

37. Power to amend Act and to make regulations and orders.

- (1) The Minister may make regulations generally for the further implementation of the Convention or for the Government 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.