



Ballast Water Hypothetical Scenario Exercise

China-ASEAN Academy on Ocean Law and Governance
 1st Special Program of Maritime Law Enforcement

National Institute for South China Sea Studies (NIOSS)
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Implementation of Convention

- Convention came into force on 8 September 2017
- As of 5 August 2019, 81 countries representing 80.76% of world tonnage
- July 2017 – MEPC decision to stagger implementation until first renewal survey – potentially up to 2024

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Ships >400gt/oil tankers>150gt

1. Built after 8 September 2017 – immediate compliance
2. Built before 17 September 2017 with IOPP renewal survey between 8 Sept 2014 and 7 Sept 2017 – compliance required at the next IOPP renewal survey on or after 8 Sept 2017 (i.e. 8 September 2019 – 7 September 2022)
3. Built before 17 September 2017 with IOPP renewal survey between 8 Sept 2012 and 7 Sept 2014 – compliance required after the second IOPP renewal survey on or after 8 Sept 2017 (i.e. 8 September 2022 – 7 September 2024)

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Ships <400gt/oil tankers<150gt

All ships constructed (keel lay date) before 8 September 2017 which are not subject to MARPOL Annex I surveys (i.e. oil tankers <150GT and other ships <400GT) must have a BWTS fitted from the date decided by the Administration, but not later than 8 September 2024.

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Potential Problem with US Coast Guard

- United States has since 2014 implemented much more stringent requirements including the requirement that any treatment system must be approved by the US Coast Guard and any IMO approved system is not automatically approved by the US Coast Guard.
- January 2017 USCG put in place a temporary regime whereby ships trading in US waters and therefore needing to comply with the U.S. regulations have either been granted extensions for fitting the required treatment systems or else permitted to install a USCG accepted Alternate Management System (AMS), in practice a system type-approved in accordance with the original IMO Guidelines.

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- An AMS will only be accepted for operation for five years, after which time a fully USCG approved system must be installed. USCG not guaranteeing that an AMS will be subsequently granted full approval
- Since the USCG announced, at the end of 2015, that it will not accept the methodology used by other IMO Member States to approve UV treatment systems when assessing the number of viable organisms in treated ballast water. The U.S. continues to maintain its position that it will only accept organisms as being non-viable if they are dead. Organisms that are living, even if unable to reproduce, are considered by the U.S. to be viable.
- There are now 17 treatment systems approved by the Coast Guard but it is yet to be seen what impact these regulations will make on ships trading in US waters, particularly the implementation of U/V systems

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Enforcement

- It is important that measures taken are effective and consistent, so that ship operators can be confident that they will not encounter situations where their vessels pass inspection in some jurisdictions but fail in others
- The compliance monitoring and enforcement regime under the BWM Convention is made of three layers of duties: Flag State, Port State, and Coastal State.

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Flag State Enforcement

- There are exceptions – the Convention does not apply to
 - ships not designed or constructed to carry ballast water or designed such that no ballast water can be discharged;
 - where the ships operate only in national waters of the Party of another Party with the authority of that other Party provided that such ships would not “impair or damage their environment, human health, property or resources, or those of adjacent or other States”;
 - warships or other ships on non-commercial government service.
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International Ballast Water Management Certificate

- Flag State inspectors or Recognized Organization surveyors verify the compliance of vessel before issuing an International Ballast Water Management Certificate.
- each ship (excluding FSUs and FPSOs) of 400 gross tonnage and greater will be required to undertake a series of surveys at specified intervals and after significant repair to ensure that the survey remains satisfactory for the service for which the ship was intended.
- A copy of the survey report and the certificate should also be sent to the administration
- The period of validity of the certificate is to be decided by the administration but must be less than five years.

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The certificate should be invalidated if

- there are significant changes in the systems of the ship which are relevant to ballast water management and subsequently the vessel fails her initial survey; or
- where the ship is transferred to another state; or where the surveys do not take place within the nominated times; or
- where the vessel fails a survey.

Under regulation A-5, national law can provide for equivalent treatment of smaller vessels, those with length 50 m or less and with less than 8m³ of maximum ballast water capacity.

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Ballast Water Management Plan

- document the safety procedures to be followed,
- describe strategies to implement ballast water management and procedures for sediment disposal,
- designate an officer on board to be in charge of ballast water management, and
- specify reporting requirements.

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Ballast water record book

- enter and maintain a record of its ballast activities and
- explain the circumstances behind, and the reasons for, any nonstandard ballasting activities (e.g., due to an exemption, for safety, or as a result of an accident).

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Port State and Coastal State enforcement

- Article 9 provides that when a ship that flies the flag of one party to the Convention is in a "port or offshore terminal" of another party, it is subject to inspection for the "purpose of determining whether the ship is in compliance with this Convention."
- International Ballast Water Management Certificate is considered a *prima facie* evidence of compliance,
- PSC officers may have difficulties in assessing each system
- only way to ensure compliance is to physically sample and analyse ballast water but testing all vessels is not possible because of resource limitations; so attempts will need to be made to prioritize vessels for inspections based on various factors.

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- generally, port State control is limited to
 - verifying the existence on board and validity of the International Ballast Water Management Certificate;
 - inspecting the Ballast Water record book; and
 - taking samples of the ballast water.
- Guidelines for Ballast Water Sampling (G2)* on 10 October, 2008. The *Guidelines* provide detailed technical requirements and procedures for the taking and analysis of samples to test compliance.

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- Detailed inspection only where
 - the ship does not have a valid certificate, or
 - where "there are clear grounds of believing" that the certificate is inconsistent in an important aspect with the condition of the ship or (the condition) of the ship's equipment, or
 - that the master and crew are not familiar or not implementing any important ballast water management arrangements
- Where a detailed inspection is allowed the inspecting party is under the obligation to ensure that no discharge of ballast water takes place until it is safe to so.

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- Where a breach of the BWC is detected, the coastal state as well as the flag state has the right to “warn, detain or exclude the ship”.
- the ship must be notified and a full written report, with all the evidence making any action necessary, should be sent to the ship’s administration.
- Permission to sail for the purpose of repairs or ballast water discharge may be granted by the coastal state if there is no danger involved in such an action.

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Damages for Detention

- Enforcement measures are to be taken in such a way so as not to unduly detain or delay the vessel under Articles 7(2), 8, 9 and 10, and compensation in the form of damages should be available where there is undue delay or detention

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Other Roles of Ports in Ballast Water Management

- Potentially, through the provision of sediment reception facilities
- Article 5 of the *Ballast Water Convention* provides for port States to provide adequate facilities in its ports and terminals for the reception of sediments from ballast water in ships.
- this Article does not require all ports and facilities to have these facilities but only where such ports and facilities are designated by the port State as places where cleaning and repair of ballast tanks occurs
- Where reception facilities are required, they should be provided and operated in accordance with *Guidelines for Sediment Reception Facilities (G1)*.

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Potentially, through the provision of ballast water reception facilities.

- Under Regulation B-3.6 of the *Ballast Water Convention*, the ballast water management requirements in Regulation B-3 do not apply where ships discharge their ballast water into a reception facility developed in accordance with IMO guidelines.
- The IMO adopted the *Guidelines for Ballast Water Reception Facilities (G5)* on 13 October 2006. The *Guidelines* do not require port States to provide reception facilities for ballast water. Where such facilities are provided, there are general requirements that the facilities are able to receive ballast water without creating a risk for environment, human health, property and resources.

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- The provision of ballast water reception facilities has been considered by a number of countries including the United States, Australia and Norway. In all cases, it was considered that the investment costs and logistics involved, the amount of land required and the fact that most ships exchange large amounts of ballast water before entering a port, combine to make the provision of land based facilities an unattractive option.

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