



BERMUDA

**MERCHANT SHIPPING (BALLAST WATER MANAGEMENT CONVENTION)
REGULATIONS 2023**

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The Minister responsible for Maritime Administration, in exercise of the powers conferred by section 122(1)(d) of the Merchant Shipping Act 2002, makes the following Regulations:

PART 1 PRELIMINARY

Citation

1 These Regulations may be cited as the Merchant Shipping (Ballast Water Management Convention) Regulations 2023.

Interpretation

2 (1) In these Regulations—

“active substance” means a substance or organism, including a virus or a fungus, that has a general or specific action on or against harmful aquatic organisms and pathogens;

“additional survey” means a survey carried out under regulation 24(3)(e);

“anniversary date” means the day and the month of each year corresponding to the date of expiry of the relevant certificate;

“annual survey” means a survey carried out under regulation 24(3)(d);

“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 capacity” means the total volumetric capacity of any tanks, spaces or compartments on a ship used for carrying, loading or discharging ballast water, including any multi-use tank, space or compartment designed to allow the carriage of ballast water;

“ballast water exchange standard D-1” means the standard prescribed in regulation 14;

“ballast water management” means mechanical, physical, chemical, and biological processes, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediments;

“ballast water management plan” is a plan which meets the requirements of regulation 11;

“ballast water management system” means any system which processes ballast water to meet the standard in regulation 20 and—

(a) includes—

(i) ballast water treatment equipment;

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- (ii) its associated control and monitoring equipment;
- (iii) piping arrangements as specified by the manufacturer; and
- (iv) its sampling facilities; and

(b) does not include a ship's ballast water fittings that would be required if a ballast water management system is not fitted;

“ballast water performance standard D-2” means the standard prescribed in regulation 15;

“ballast water tank” means any tank, space or compartment on board a ship used for carrying ballast water;

“Bermuda controlled waters” means the inland waters and the territorial sea of Bermuda as prescribed in Article 2 of the Bermuda (Territorial Sea) Order in Council 1988 and the Bermuda exclusive economic zone prescribed in paragraph 1 of the Proclamation Establishing an Exclusive Economic Zone for Bermuda 1996;

“Bermuda ship” means a ship registered in Bermuda or a ship that is not registered under the law of any State but is eligible for registration in Bermuda under the Act;

“Bermuda Shipping and Maritime Authority” or “BSMA” means the Bermuda Shipping and Maritime Authority established under section 3 of the Bermuda Shipping and Maritime Authority Act 2016;

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

“BWMS Code” means the Code for Approval of Ballast Water Management Systems adopted by IMO Resolution MEPC.300(72);

“Certifying Authority” means—

- (a) the BSMA; or
- (b) any organisation which is an authorised organisation including Recognised Organisations (RO) and other appropriate organisations recognised and authorised by the BSMA for the purpose of undertaking surveys in accordance with the Code for Recognised Organisations (RO Code) resolutions MEPC.237(65) and MSC.349(92) adopted by the IMO, and which has a valid agreement with the BSMA;

“Chief Executive Officer” or “CEO” means the Chief Executive Officer appointed under section 25 of the Bermuda Shipping and Maritime Authority Act 2016;

“Chief Marine Surveyor” or “CMS” means the Chief Marine Surveyor referred to in section 10 of the Act;

“Competent Authority” means in relation to any State other than Bermuda, the authority designated by the State as having responsibility for the relevant function, or if none, the State;

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“Convention” or “BWM Convention” means the International Convention for the Control and Management of Ships’ Ballast Water and Sediments 2004, adopted in London on 13 February 2004, and includes the Annex (regulations for the control and management of ships’ ballast water and sediments) and its appendices;

“Convention State” means a State which is a party to the BWM Convention;

“court”, in the case of judicial proceedings or an application for disclosure, means the Supreme Court;

“discharge”, in relation to ballast water or sediments, means any release howsoever caused from a ship and includes any escape, disposal, spilling, leaking, pumping, emitting or emptying;

“exchange” means a process involving the replacement of water in a ballast water tank using the sequential method or pump-through method which complies with regulations 14 and 16;

“FPSO” means a Floating Production, Storage and Offloading unit;

“FSU” means a Floating Storage Unit;

“GT” 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;

“Guidelines developed by the IMO” means the Guidelines developed by the IMO which are relevant to the provisions of the BWM Convention to which the regulation or paragraph in these Regulations relates and which are published by the CMS on the BSMA website as having that effect;

“Harbour Master” means the Harbour Master, Dock Master or other officer appointed by the harbour authority, or any person having authority to act in such capacity;

“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;

“IBWM Certificate” means an International Ballast Water Management Certificate issued in accordance with the BWM Convention;

“IMO” means the International Maritime Organization;

“initial survey” means a survey carried out under regulation 24(3)(a);

“intermediate survey” means a survey carried out under regulation 24(3)(c);

“Merchant Shipping Notice” means a Notice described as such and issued by the BSMA or an equivalent UK Merchant Shipping Notice which the BSMA specifies as being applicable;

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“non-Bermuda ship” means a ship which is registered in a State other than Bermuda;

“offshore installation” means—

- (a) a fixed or floating platform, including a drilling rig;
- (b) a floating production, storage and offloading facility used for offshore production and storage of oil; or
- (c) a floating storage unit used for the offshore storage of produced oil;

“owner”, in relation to a ship, means the registered owner, managing owner, a managing agent or a bareboat charterer; and a reference in these Regulations to the owner includes a reference to that person;

“pleasure vessel” has the meaning given in regulation 2 of the Merchant Shipping (Registration of Ships) Regulations 2003;

“prescribed fee” means a fee prescribed in the Merchant Shipping (Fees) Regulations 2023;

“reception facility” means a facility which is capable of receiving, storing, processing or trans-shipping ballast water or sediment in a manner that reduces the likelihood of aquatic organisms or pathogens being introduced into waters;

“renewal survey” means a survey carried out under regulation 24(3)(b);

“sediments” means matter 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;

“State” includes a territory.

(2) For the purposes of these Regulations—

“constructed” in respect of a ship means a stage of construction where—

- (a) the keel is laid;
- (b) construction identifiable with the specific ship begins;
- (c) assembly of the ship has commenced comprising at least 50 GT or 1 percent of the estimated mass of all structural material, whichever is less; or
- (d) the ship undergoes a major conversion;

“major conversion” means subject to paragraph (3), a conversion of a ship which—

- (a) changes its ballast water carrying capacity by 15 percent or greater;
- (b) changes the ship type;

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- (c) in the opinion of the CMS, is projected to prolong its life by ten years or more; or
 - (d) results in modifications to its ballast water system other than component replacement-in-kind.
- (3) In these Regulations, the conversion of a ship to meet the requirement of ballast water exchange standard D-1 is not to be treated as a major conversion.
- (4) In these Regulations, “from the nearest land” means—
- (a) in the case of Bermuda, from the baseline from which the territorial sea of Bermuda, as described in Article 2 of the Bermuda (Territorial Sea) Order in Council 1988, territorial sea is established; and
 - (b) in the case of all other States, from the baseline from which the State’s territorial sea is established, in accordance with international law, except that “from the nearest land off the north-eastern coast of Australia” has the meaning given in Regulation A-1 of the BWM Annex, and “nearest land” is to be construed accordingly.
- (5) In these Regulations—
- (a) wherever the term “Administration” appears in an instrument incorporated by reference into these Regulations, it means—
 - (i) in the case of a Bermuda ship, the BSMA; and
 - (ii) in the case of a non-Bermuda ship, the Competent Authority of the State whose flag the ship is entitled to fly;
 - (b) wherever the term “company” appears in an instrument incorporated by reference into these Regulations, it means the owner of the ship, as defined in paragraph (1);
 - (c) in interpreting an instrument incorporated by reference into these Regulations, “should” is to be read as “must”; and
 - (d) in the event of an inconsistency between a definition in an instrument incorporated by reference into these Regulations and any other definition in these Regulations, that other definition prevails to the extent of the inconsistency.

Ambulatory provision

3 (1) Any reference in these Regulations to a specific provision in an international instrument is to be construed as a reference to the provision in that instrument as modified from time to time; and if the instrument is replaced by another instrument, as a reference to the provision in that other instrument.

(2) In this regulation, “international instrument” means the BWM Convention or an instrument, including a code, guidelines or guidance, made under that Convention.

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Object of Regulations

4 The object of these Regulations is to give effect in the laws of Bermuda, to the BWM Convention and to make associated provisions.

Application

5 (1) Subject to paragraphs (2) to (4) and regulation 6, these Regulations apply to—

- (a) a Bermuda ship wherever it may be;
- (b) a non-Bermuda ship within Bermuda or Bermuda controlled waters.

(2) Part 3 does not apply to a ship under 400 GT; but the Chief Marine Surveyor may establish appropriate measures for such a ship as he may determine, in order to ensure that the applicable provisions of Regulation E1.1 of the Convention are complied with by the ship.

(3) Part 3 does not apply to an offshore installation situated within Bermuda controlled waters.

(4) These Regulations do not apply to—

- (a) a ship not designed or constructed to carry ballast water;
- (b) a ship which operates only in Bermuda controlled waters, except where a determination has been made under paragraph (5);
- (c) a Bermuda ship which operates only in waters under the jurisdiction of another Convention State, where that Convention State has authorised the ship's exclusion from the requirements of the BWM Convention;
- (d) a ship which operates—
 - (i) only in Bermuda controlled waters and on the high seas, where the CMS has authorised the ship's exclusion from the requirements of these Regulations; or
 - (ii) only in waters under the jurisdiction of another Convention State and on the high seas, where that Convention State has authorised the ship's exclusion from the requirements of the BWM Convention;
- (e) a warship, naval auxiliary or other ship, owned 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.

(5) In the case of a ship within paragraph (4)(b), the Chief Marine Surveyor may determine that these Regulations apply to that ship, if the Chief Marine Surveyor is satisfied that the discharge of ballast water from the ship would impair or damage the environment, human health, property or resources.

(6) In the case of a ship within paragraph (4)(d)(i), the Chief Marine Surveyor may only authorise the ship's exclusion if the Chief Marine Surveyor is satisfied that the

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discharge of ballast water from the ship would not impair or damage the environment, human health, property or resources.

(7) Where the Chief Marine Surveyor makes a determination under paragraph (5), in respect of a non-Bermuda ship, the Chief Marine Surveyor must notify—

- (a) the ship's Certifying Authority; and
- (b) the Competent Authority in relation to that ship.

(8) These Regulations apply to a ship which is registered in a State which is not a Convention State and in applying these Regulations, no more favourable treatment may be given to such a ship than is given to a ship registered in a Convention State.

Exceptions to the requirement to conduct ballast water management

6 Regulation 13 does not apply to—

- (a) the uptake or discharge of ballast water and sediments necessary for ensuring the safety of a ship in emergency situations or saving life at sea;
- (b) the accidental discharge or ingress of ballast water and sediments resulting from damage to a ship or its equipment, provided—
 - (i) all reasonable precautions have been taken before and after the occurrence of the damage or discovery of the damage or discharge for the purpose of preventing or minimising the discharge; and
 - (ii) the owner or master has not willfully or recklessly caused the damage;
- (c) the uptake and discharge of ballast water and sediments, when being used for the purpose of avoiding or minimising pollution incidents from the ship;
- (d) the uptake and subsequent discharge on the high seas of the same ballast water and sediments; and
- (e) the discharge of ballast water and sediments from a ship at the same location where the whole of that ballast water and those sediments originated and provided that no mixing with unmanaged ballast water and sediments from other areas has occurred.

Exemptions from the requirement to conduct ballast water management

7 (1) Without prejudice to specific powers to grant an exemption contained in these Regulations, the Chief Marine Surveyor may grant an exemption from the requirements of regulation 13, if the Chief Marine Surveyor is satisfied that the conditions specified in paragraphs (2) to (5) are met.

(2) The first condition is that the exemption is granted in relation to a ship which—

- (a) is engaged on a voyage or voyages between specified ports or locations; or

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(b) operates exclusively between specified ports or locations.

(3) The second condition is that the exemption is granted for no more than five years and is subject to review at the time of each annual or intermediate survey.

(4) The third condition is that the ship in relation to which the exemption is granted does not mix ballast water or sediments other than between the ports or locations specified in paragraph (2).

(5) The fourth condition is that—

(a) the exemption granted must not impair or damage the environment, human health, property or resources of adjacent or other States; and

(b) where the Chief Marine Surveyor considers that an exemption may have such an effect, before granting the exemption, the Chief Marine Surveyor must consult the adjacent or other State.

(6) In considering a request for an exemption, the Chief Marine Surveyor must take account of any guidelines on risk assessment developed by the IMO.

(7) The grant of an exemption is not effective until it has been notified by the Chief Marine Surveyor, to—

(a) the IMO; and

(b) all Convention States which, in the opinion of the Chief Marine Surveyor may be affected by the grant of the exemption.

(8) An exemption granted under this regulation must be recorded in the ship's ballast water record book.

Equivalentents

8 (1) The Chief Marine Surveyor may permit any fitting, material, appliance or apparatus to be fitted in a ship of a type described in paragraph (2) as an alternative to that required by these Regulations if that fitting, material, appliance or apparatus is at least as effective as that required by these Regulations.

(2) A ship referred to in paragraph (1) is a ship which is a pleasure vessel or a ship used primarily for search and rescue which—

(a) is less than 50 metres in length overall; and

(b) has a maximum ballast water capacity of 8 cubic metres.

(3) In considering whether to grant permission under paragraph (1), the Chief Marine Surveyor must take account of guidelines developed by the IMO.

Authorisation of Certifying Authorities

9 (1) A person authorised by the CMS as a Certifying Authority must be authorised in accordance with—

(a) Regulations 1, 3 and 4 of the BWM Annex; and

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(b) the RO Code.

(2) In this regulation, “RO Code” means the Code for Recognised Organisations adopted by IMO Resolution MEPC.237(65) and includes all amendments adopted by the Marine Environment Protection Committee of the IMO on or before the date on which these Regulations come into force.

(3) The CMS must notify the IMO of—

- (a) the name of any person authorised as a Certifying Authority; and
- (b) the specific responsibilities and conditions of that Certifying Authority.

PART 2

MANAGEMENT AND CONTROL OF BALLAST WATER ON SHIPS

General obligation concerning the discharge of ballast water

10 The discharge of ballast water must be conducted through ballast water management, in accordance with these Regulations.

Ballast water management plan

11 (1) The owner and master of a ship must ensure that an approved ballast water management plan is carried on board the ship, and the plan is implemented.

(2) A ballast water management plan must be specific to the ship and must—

- (a) detail safety procedures for the ship and the crew associated with ballast water management as required by these Regulations or the BWM Convention, as the case may be;
- (b) provide a detailed description of the actions to be taken to implement the ballast water management requirements and supplemental ballast water management practices;
- (c) detail the procedures for the disposal of sediments at sea, and on shore;
- (d) include the procedures for coordinating shipboard ballast water management that involves discharge to the sea with the authorities of the State into whose waters such discharge will take place;
- (e) designate the officer on board in charge of ensuring that the plan is properly implemented;
- (f) contain the reporting requirements for ships provided for under the Convention; and
- (g) be written in the working language of the ship’s crew, except that if the working language is not English, French or Spanish, the plan must be translated—
 - (i) in the case of a Bermuda ship, into English;

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(ii) in the case of any other ship, into English, French or Spanish.

(3) A ballast water management plan must be approved—

- (a) in the case of a Bermuda ship, by the Certifying Authority, which in considering whether to approve the plan, must take into account any relevant guidelines developed by the IMO; and
- (b) in the case of a non-Bermuda ship, by the Competent Authority for the ship.

Ballast water record book

12 (1) The owner and master of a ship must ensure that a ballast water record book is carried on board the ship.

(2) A ballast water record book—

- (a) may be an electronic record system or be integrated into another record book or system; and
- (b) must contain the information specified in Appendix II to the BWM Annex.

(3) Ballast water record book entries must be maintained on board the ship for at least two years from the date of the last entry in the book, and thereafter, by the owner, for a further period of at least three years.

(4) An entry must be made by the master in the ballast water record book describing the circumstances of, and the reason for any discharge of ballast water—

- (a) which falls within one of the exceptions provided by regulation 6;
- (b) for which an exemption has been granted under regulation 7;
- (c) to a reception facility designated to take into account the guidelines developed by the IMO for such facilities; or
- (d) of an accidental or exceptional nature not otherwise exempted by these Regulations.

(5) The master must ensure that a ballast water record book is readily available for inspection at all reasonable times.

(6) The master must—

- (a) ensure that each operation concerning ballast water is fully recorded without delay in the ballast water record book;
- (b) sign each completed page in the ballast water record book; and
- (c) when requested to do so by an inspector, certify that a copy of an entry in the ballast water record book is a true copy.

(7) Each entry in a ballast water record book concerning a ballast water operation must be signed by the officer in charge of the operation.

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(8) Entries in a ballast water record book must be in English or, if the working language of the ship is not English, be translated into English.

(9) An inspector may inspect the ballast water record book on a ship while the ship is in port or at an offshore installation.

(10) Where a ballast water record book is inspected under paragraph (9), the inspector may—

- (a) make a copy of any entry; and
- (b) require the master to certify that the copy is a true copy.

(11) Any copy certified in accordance with paragraph (10) is admissible in any judicial proceedings as evidence of the facts stated in the entry.

(12) The inspection of a ballast water record book and the taking of a certified copy must be performed as expeditiously as possible without causing the ship to be unduly delayed.

(13) In the case of an unmanned ship under tow, the ballast water record book may be kept on the towing ship.

Ballast water management for ships

13 (1) In relation to a ship constructed before 2009 with a ballast water capacity of between 1,500 and 5,000 cubic metres inclusive, ballast water management must be conducted that at least meets ballast water exchange standard D-1 or ballast water performance standard D-2, until the renewal survey described in paragraph (10), after which time it shall at least meet the ballast water performance standard D-2.

(2) In relation to a ship—

- (a) constructed before 2009 with a ballast water capacity of less than 1,500 or greater than 5,000 cubic metres; or
- (b) constructed in or after 2009, but before 2012, with a ballast water capacity of 5,000 cubic metres or more,

ballast water management must be conducted that at least meets ballast water exchange standard D-1 or ballast water performance standard D-2, until the renewal survey described in paragraph (10), after which time it must at least meet ballast water performance standard D-2.

(3) In relation to a ship constructed in or after 2009 and before 8 September 2017, with a ballast water capacity of less than 5,000 cubic metres, ballast water management must be conducted that at least meets ballast water performance standard D-2 from the date of the renewal survey described in paragraph (10).

(4) In relation to a ship constructed in or after 2012 and before 8 September 2017, with a ballast water capacity of 5,000 cubic metres or more, ballast water management must be conducted that at least meets ballast water performance standard D-2 from the date of the renewal survey described in paragraph (10).

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(5) In relation to a ship constructed on or after 8 September 2017, ballast water management must be conducted that at least meets ballast water performance standard D-2.

(6) In relation to a ship constructed before 8 September 2017 to which the renewal survey described in paragraph (10) does not apply, ballast water management must be conducted that at least meets ballast water performance standard D-2 from 8 September 2024.

(7) In relation to a ship to which paragraph (3), (4) or (6) applies, ballast water management must be conducted that at least meets ballast water exchange standard D-1 or ballast water performance standard D-2, until such time as it is required to meet ballast water performance standard D-2.

(8) This regulation does not apply to ships that discharge ballast water to a reception facility designed, taking account of the Guidelines developed by the IMO for such facilities.

(9) The CMS may accept other methods of ballast water management other than those required by this regulation, provided that such methods ensure at least the same level of protection to the environment, human health, property or resources, and are approved in principle by the IMO.

(10) For the purposes of this regulation—

(a) the relevant renewal survey is—

(i) the first renewal survey required under the Oil Pollution Regulations on or after 8 September 2017 if—

(A) this survey is completed on or after 8 September 2019; or

(B) a renewal survey under the Oil Pollution Regulations was completed on or after 8 September 2014 but prior to 8 September 2017; or

(ii) the second renewal survey under the Oil Pollution Regulations on or after 8 September 2017, if the first renewal survey under the Oil Pollution Regulations on or after 8 September 2017 was completed prior to 8 September 2019,

provided a renewal survey under the Oil Pollution Regulations was not completed on or after 8 September 2014 but was completed prior to 8 September 2017; and

(b) “Oil Pollution Regulations” means the Merchant Shipping (Prevention of Oil Pollution) Regulations 2021.

Ballast water exchange standard D-1

14 (1) A ship performing ballast water exchange must do so with an efficiency of at least 95 percent volumetric exchange of ballast water.

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(2) In the case of a ship exchanging ballast water by the pumping-through method, the standard described in paragraph (1) is met by pumping through three times the volume of each ballast water tank.

(3) The Chief Marine Surveyor may accept pumping-through of a level less than that in paragraph (2), where the ship can demonstrate that at least 95 percent volumetric exchange is met.

Ballast water performance standard D-2

15 (1) A ship conducting ballast water management must discharge less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension and less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimension and greater than or equal to 10 micrometres in minimum dimension, and discharge of the indicator microbes must not exceed the specified concentrations described in paragraph (2).

(2) Indicator microbes, as a human health standard, include—

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

Ballast water exchange

16 (1) Where ballast water exchange is conducted to meet the ballast water exchange standard D-1, the master must whenever possible, ensure that the ballast water exchange is conducted at least 200 nautical miles from the nearest land and in water at least 200 metres in depth, taking into account the guidelines developed by the IMO.

(2) In cases where the master is unable to conduct ballast water exchange in accordance with paragraph (1), the ballast water exchange must be conducted—

- (a) taking into account the guidelines described in that paragraph; and
- (b) as far from the nearest land as possible,

and in all cases, at least 50 nautical miles from the nearest land and in water at least 200 metres in depth.

(3) In sea areas where the distance from the nearest land or the depth does not meet the parameters described in paragraph (1) or (2), if a Convention State has designated an area in accordance with Regulation B-4(2) of the BWM Annex, a master may conduct ballast water exchange in that area.

(4) A ship must not be required to deviate from its intended voyage, or delay the voyage, in order to comply with paragraph (1).

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(5) Ballast water exchange is not required to comply with paragraph (1) or (2), if the master has reasonable grounds to believe that such exchange would threaten the safety or stability of the ship, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other extraordinary condition.

(6) Where a ballast water exchange must be conducted in accordance with this regulation but there is a failure to do so, the master must enter the reasons for the failure, in the ballast water record book.

Sediment management for ships

17 (1) The removal and disposal of sediments from spaces on a ship designated to carry ballast water must be in accordance with the ship's ballast water management plan.

(2) Paragraph (3) applies to—

- (a) a ship constructed in or after 2009, but before 2012, with a ballast waste capacity of 5,000 cubic metres or more;
- (b) a ship constructed in or after 2012 and before 8 September 2017 with a ballast waste capacity of 5,000 cubic metres or more; and
- (c) a ship constructed on or after 8 September 2017.

(3) A ship to which this paragraph applies must, so long as safety or operational efficiency is not compromised—

- (a) be designed and constructed with a view to minimise the uptake and undesirable entrapment of sediments;
- (b) facilitate removal of sediments; and
- (c) provide safe access to allow for sediment removal and sampling, taking into account guidelines developed by the IMO.

(4) A ship constructed before 2009 must, to the extent practicable, comply with paragraph (3).

Requirement to provide sediment reception facilities

18 (1) This regulation applies to any shipyard within a harbour in Bermuda in which—

- (a) the cleaning or repair of ballast water tanks occurs; and
- (b) the ballast water tanks in question are those of ships to which these Regulations apply.

(2) The owner and operator of a shipyard to which this regulation applies must ensure that sediment reception facilities which meet the requirements of Article 5 - Sediment Reception Facilities of the Convention are provided for the facility.

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(3) In this regulation “shipyard” means any yard or dry dock (including the precincts thereof) in which ships or vessels are constructed, reconstructed, repaired, fitted or finished.

Duties of crew

- 19 (1) The master and every crew member of a ship must—
- (a) be familiar with their duties in the implementation of ballast water management, particular to the ship; and
 - (b) appropriate to their duties, be familiar with the ship’s ballast water management plan.
- (2) The owner and master of a ship must ensure that the ship’s crew are familiar with their duties under paragraph (1).

Approval requirements for ballast water management systems

- 20 (1) Subject to paragraph (2), a ballast water management system—
- (a) installed on a Bermuda ship before 28 October 2020, must be approved and issued with a BWMS Type Approval Certificate by the Certifying Authority, taking into account guidelines developed by the IMO or the BWMS Code;
 - (b) installed on a Bermuda ship on or after 28 October 2020, must be approved and be issued with a BWMS Type Approval Certificate by the Certifying Authority in accordance with the BWMS Code; and
 - (c) installed on non-Bermuda ships, must be issued with a BWMS Type Approval Certificate by the ship’s Competent Authority.
- (2) A ballast water management system which makes use of active substances or preparations containing one or more active substances must be approved by the IMO.
- (3) Where an approval granted by the IMO is withdrawn, the use of the relevant active substance or substances is prohibited from a date one year after the date of such withdrawal.
- (4) A ballast water management system must be safe in terms of the ship, its equipment and the crew.
- (5) Subject to regulation 22, a ballast water management system when it is installed on a Bermuda ship, must have a BWMS Type Approval Certificate issued by the Certifying Authority.
- (6) A copy of the BWMS Type Approval Certificate must be kept on board the ship to which it relates.

Prototype ballast water treatment technologies

- 21 (1) Where a ship that, prior to the date that the ballast water performance standard D-2 would otherwise apply to it, participates in a programme approved by the

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Chief Marine Surveyor to test and evaluate promising ballast water treatment technologies, the ballast water performance standard D-2 does not apply to that ship until five years from the date on which the ship would otherwise be required to comply with that standard.

(2) Where a ship, after the date on which the ballast water performance standard D-2 would otherwise apply to it, participates in a programme approved by the Chief Marine Surveyor taking into account guidelines developed by the IMO, to test and evaluate promising ballast water technologies with the potential to result in treatment technologies achieving a standard higher than the ballast water performance standard D-2, the ballast water performance standard D-2 ceases to apply to that ship for five years from the date of installation of such technology.

(3) A treatment system approved under this regulation must, throughout the test and evaluation period, be operated consistently and as designed.

Additional measures in special areas

22 Where a Convention State has determined in accordance with Regulation C-1 of the BWM Annex that measures in addition to those required in section B of the Convention are necessary to prevent, reduce or eliminate the transfer of harmful aquatic organisms and pathogens through ballast water and sediments and has specified additional standards or requirements, a ship to which these Regulations apply must comply with any such standard or requirement.

Warnings concerning ballast water uptake in certain areas

23 (1) The Chief Marine Surveyor may determine that ships must not uptake ballast water in areas within Bermuda controlled waters (“non-uptake areas”)—

- (a) known to contain outbreaks, infestations, or populations of harmful aquatic organisms and pathogens (including 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 there are times during which a tidal stream is known to be more turbid.

(2) Where the Chief Marine Surveyor determines that a ship must not uptake ballast water under paragraph (1), the Chief Marine Surveyor must notify—

- (a) ships in or which may enter Bermuda controlled waters, of the non-uptake areas; and
- (b) the IMO and any potentially affected coastal States, of any non-uptake areas and the time period such warning is likely to be in effect.

(3) A notice issued by the Chief Marine Surveyor under paragraph (2) must contain—

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- (a) the precise coordinates of the non-uptake area or areas, and where possible, the location of any alternative area or areas for the uptake of ballast water; and
 - (b) advice to ships needing to uptake ballast water in the non-uptake area, describing arrangements made for alternative supplies.
- (4) The Chief Marine Surveyor must notify ships, the IMO and any potentially affected coastal States when a determination under paragraph (1) is no longer applicable.

PART 3

**SURVEY AND CERTIFICATION REQUIREMENTS FOR BALLAST WATER
MANAGEMENT**

Surveys

24 (1) This regulation applies to a Bermuda ship to which this part applies, excluding floating platforms, FSUs and FPSOs.

(2) A ship to which this regulation applies must be subjected to the surveys described in paragraph (3).

(3) The surveys are—

- (a) an initial survey, as prescribed in Regulation E-1.1.1 of the Convention, which must be completed before a ship is put in service or before an IBWM Certificate is first issued in respect of that ship;
- (b) a renewal survey, as prescribed in Regulation E-1.1.2 of the Convention, which must be completed within five years of the issue of an IBWM Certificate and at intervals not exceeding five years thereafter;
- (c) an intermediate survey, as prescribed in Regulation E-1.1.3 of the Convention, which must be completed either—
 - (i) no more than three months before or after the second anniversary date of the issue of an IBWM Certificate; or
 - (ii) no more than three months before or after the third anniversary date of the issue of an IBWM Certificate,

and this survey takes place in that year of an annual survey described in sub-paragraph (d);

- (d) an annual survey, as prescribed in Regulation E-1.1.4 of the Convention, which must be completed no more than three months before or after the anniversary date of the issue of an IBWM Certificate, except where an intermediate survey described in sub-paragraph (c) has been completed within that period; and

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- (e) an additional survey (either general or partial according to the circumstances) if required in accordance with Regulation E-1.1.5 of the Convention, which must be completed either—
 - (i) after a repair resulting from investigations prescribed in regulation 26(5); or
 - (ii) when an important change is made to the ship.

(4) For the purposes of paragraph (3)(e)(ii), an important change is a change, replacement or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to ensure full compliance with the BWM Convention.

(5) In case of a dispute as to whether a change effected or intended to be effected in respect of a ship is an important change for the purposes of paragraph (3)(e)(ii), the owner or master of a ship may serve a written request on the Chief Marine Surveyor, seeking advice.

(6) A change is to be regarded as not being an important change for those purposes, unless the Chief Marine Surveyor advises to the contrary within 21 days of receipt of a request under paragraph (5).

(7) A survey required by this regulation may be carried out at the same time as, and as part of, a survey of a ship carried out for the purposes of any other enactment.

Surveyors and Authorised Organisations

25 (1) Surveys of ships, for the purposes of applying and enforcing these Regulations may be carried out by—

- (a) any surveyor appointed by the BSMA under section 217 of the Act; or
- (b) any officer authorised by the BSMA under section 218, 219 or 220 of the Act, and
- (c) an authorised organisation which has a valid agreement with the BSMA.

(2) The Chief Marine Surveyor may authorise surveyors or authorised organisations to—

- (a) require ships that are surveyed to comply with these Regulations and the Convention; and
- (b) carry out surveys and inspections at the request of the competent authorities of a Convention State that is a Party.

(3) The BSMA shall notify the IMO of the specific responsibilities and conditions of the authority delegated to the surveyors or authorised organisations under these Regulations.

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Responsibilities of owners and masters

26 (1) The owner and master of a ship must ensure the condition of the ship and its equipment is maintained to conform—

- (a) in the case of a Bermuda ship, with these Regulations; and
- (b) in the case of any other ship, with the requirements of the BWM Convention,

so as to ensure that the ship, in all respects, will remain fit to proceed to sea without presenting an unreasonable threat of harm to the environment, human health, property or resources.

(2) After completion of any survey described in regulation 24(3), the owner and master must ensure that no change is made in the structure, equipment, systems, fittings, arrangements or material subject to that survey, except by direct replacement, without the approval of—

- (a) the Certifying Authority; or
- (b) the Competent Authority of the Convention State which carried out the survey in respect of that ship.

(3) Whenever—

- (a) an accident occurs on a ship; or
- (b) a defect is discovered in a ship,

which substantially affects the ability of the ship to conduct ballast water management in accordance with these Regulations or the BWM Convention, as the case may be, the owner and master of the ship must comply with the requirements in paragraph (4).

(4) The requirements are that—

- (a) in the case of a Bermuda ship, the accident or defect is reported at the earliest opportunity, to the Certifying Authority that issued the IBWM Certificate, in respect of that ship;
- (b) in the case of a Bermuda ship which is in a port outside Bermuda, the accident or defect is also reported at the earliest opportunity, to the Competent Authority in the State in which the port is situated; and
- (c) if the ship is a non-Bermuda ship in a port in Bermuda, the accident or defect is reported to the Chief Marine Surveyor.

(5) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a), that Certifying Authority must—

- (a) cause an investigation to be initiated to determine whether or not an additional survey and any repair is necessary; and
- (b) if it considers that an additional survey or repair is necessary, cause that survey or repair to be carried out.

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(6) Whenever an accident or defect is reported to a Certifying Authority in accordance with paragraph (4)(a) and the ship in question is in a port outside Bermuda, the Certifying Authority must take all appropriate steps to ascertain that the requirement in paragraph (4)(b) has been complied with.

(7) In paragraph (2) “direct replacement” means direct replacement of equipment and fittings with equipment and fittings that conform with the requirements under these Regulations or the BWM Convention, as the case may be, which apply to that ship.

Issue and endorsement of IBWM Certificates

27 (1) This regulation applies to a Bermuda ship to which this Part applies.

(2) Subject to the payment of any prescribed fee, following completion of an initial or renewal survey, a Certifying Authority must issue an IBWM Certificate in respect of a ship, if that Certifying Authority is satisfied that the ship complies with the requirements of these Regulations.

(3) Where a Certifying Authority is satisfied, following completion of an intermediate or annual survey of a ship, that the requirements of these Regulations are being complied with, the Certifying Authority must endorse the IBWM Certificate in respect of that ship, to that effect.

(4) The Chief Marine Surveyor may request a Competent Authority of a Convention State to—

- (a) survey a ship to which this regulation applies; and
- (b) issue, or authorise the issue of; or endorse, or authorise the endorsement of an IBWM Certificate in respect of that ship, in accordance with the requirements of the BWM Convention, if the Competent Authority is satisfied that the ship complies with the relevant requirements of the BWM Convention.

(5) Where an IBWM Certificate is issued under paragraph (3)—

- (a) the Chief Marine Surveyor is to be treated as the Certifying Authority in relation to it; and
- (b) any reference in these Regulations to the Certifying Authority that issued the certificate is to be treated as a reference to the Chief Marine Surveyor.

(6) An IBWM Certificate must not be issued in respect of a ship entitled to fly the flag of a State which is not a Convention State.

Issue of certificate by a Convention State

28 (1) The Chief Marine Surveyor may, at the request of the Competent Authority of a Convention State, carry out a survey of a ship registered in that State and if satisfied that the requirements of the BWM Convention are complied with—

- (a) issue an IBWM Certificate in respect of that ship; or

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- (b) endorse such a certificate in accordance with the requirements of the BWM Convention.
- (2) The Chief Marine Surveyor must, as soon as possible after issuing or endorsing a certificate under paragraph (1), send to the requesting Competent Authority—
 - (a) a copy of a certificate issued or endorsed in accordance with paragraph (1) ; and
 - (b) a copy of the corresponding survey report.
- (3) A certificate issued or endorsed in accordance with paragraph (1)—
 - (a) must include a statement to the effect that it has been issued or endorsed at the request of the Competent Authority of a Convention State; and
 - (b) has the same force and must receive the same recognition as a certificate issued by the requesting Competent Authority.

Form and content of an IBWM Certificate

29 An IBWM Certificate issued or endorsed under regulation 27 must be—

- (a) in the form set out in Appendices to the BWM Annexes; and
- (b) in English.

Duration and validity of IBWM Certificates

30 (1) Subject to paragraphs (2) to (6), an IBWM Certificate must be issued for a period specified by the Certifying Authority which must not exceed five years.

(2) Where a renewal survey is completed within a period of three months before the date of expiry of an IBWM Certificate, the new certificate is valid from the date of completion of the renewal survey, to a date not exceeding five years from the date of expiry of the existing certificate.

(3) Where a renewal survey is completed after the date on which an IBWM Certificate expires, the new certificate is valid from the date of completion of the renewal survey, for a period not exceeding five years from the date of expiry of the IBWM Certificate.

(4) Where a renewal survey is completed more than three months before the expiry date of an IBWM Certificate, the new certificate is valid from the date of completion of the renewal survey, for a period not exceeding five years from that date.

(5) If an intermediate or annual survey is completed before the period prescribed in regulation 24(3)(c) or (d)—

- (a) the anniversary date shown on the IBWM Certificate must be amended by endorsement to a date not more than three months later than the date on which the survey was completed;

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- (b) the subsequent intermediate or annual survey must be completed at the intervals prescribed in regulation 24(3)(c) or (d) using the anniversary date as amended in accordance with sub-paragraph (a); and
 - (c) the expiry date of the IBWM Certificate may remain unchanged provided one or more intermediate or annual surveys, as the case may be, are completed so that the maximum intervals between surveys as prescribed in regulation 24(3) are not exceeded.
- (6) An IBWM Certificate ceases to be valid—
- (a) if the structure, equipment, systems, fittings, arrangements and material necessary to comply fully with these Regulations are changed, replaced or significantly repaired and the certificate is not endorsed in accordance with these Regulations or the BWM Convention, as the case may be;
 - (b) if relevant surveys are not completed within the periods prescribed in regulation 24(4);
 - (c) if the IBWM Certificate is not endorsed following an intermediate or annual survey; or
 - (d) if the ship is transferred to the flag of another State.

Extension of IBWM Certificates

31 (1) If an IBWM Certificate is issued for a period of validity of less than five years, the Certifying Authority which issued the certificate may extend the period of validity of that certificate to a maximum of five years, provided an intermediate survey has been completed as appropriate.

(2) Where a renewal survey has been completed, but the IBWM Certificate in respect of that survey cannot be issued or placed on board the ship before the date on which the existing certificate is due to expire, the Certifying Authority may endorse the existing certificate as being valid for a period not exceeding five months from the date on which that existing certificate is due to expire.

(3) Where—

- (a) a renewal survey has not been completed before the date on which an IBWM Certificate expires; and
- (b) on the date of expiry, the ship is not in the port in which the survey is due to be carried out,

the Certifying Authority that issued the existing IBWM Certificate may extend the period of validity of that certificate, for a period not exceeding three months, if it appears to the Certifying Authority that it is proper and reasonable to do so, solely for the purpose of enabling the ship to complete the voyage to its port of survey.

(4) A ship in respect of which a certificate has been extended under paragraph (3) must not, following its arrival in the port in which it is to be surveyed, leave that port before a new certificate is issued.

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(5) A certificate issued following completion of the renewal survey in the circumstances described in paragraph (3) may be issued for a period not exceeding five years from the date of expiry of the existing certificate, before the extension was granted.

(6) Where no other extension has been granted under this regulation, the Certifying Authority which issued an IBWM Certificate in respect of a ship used solely on short voyages may extend the validity of that certificate, for a period not exceeding one month from the date of expiry.

(7) A certificate issued following completion of the renewal survey in the circumstances described in paragraph (6) may be issued for a period not exceeding five years from the date of expiry of the existing certificate, before the extension was granted.

(8) An extension of validity under paragraph (3) or (6) must be disregarded for the purposes of determining the date of expiry of an existing IBWM Certificate under paragraph (2) or (3).

(9) In the circumstances described in paragraph (10), a certificate issued following a renewal survey which is completed—

- (a) after the expiry of an IBWM Certificate; or
- (b) during the period of an extension granted under paragraph (3) or (6),

may be issued as being valid, to a date not exceeding five years from the date of completion of that renewal survey.

(10) The circumstances are where the owner of the ship—

- (a) submits a request to the Certifying Authority for the new period of certification to begin on the date of the completion of the relevant renewal survey;
- (b) satisfies the Certifying Authority that the owner is justified in making such a request; and
- (c) complies with any reasonable additional survey requirements which the Certifying Authority may impose.

(11) In this regulation, “short voyage” means a voyage which—

- (a) does not exceed 1,000 nautical miles between the last port of call in the State in which the voyage begins and the last port of call in the voyage, before beginning any return voyage; and
- (b) on any return voyage, does not exceed 1,000 nautical miles between the port of call in which the ship begins its return voyage and the first port of call in the State in which the voyage began,

and for the purposes of this definition, no account is to be taken of any deviation by a ship from its intended voyage due solely to stress of weather or any other circumstances that neither the master nor the owner could have prevented or forestalled.

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Miscellaneous provisions relating to IBWM Certificates

32 (1) The Chief Marine Surveyor may cancel an IBWM Certificate issued in respect of a Bermuda ship, where the Chief Marine Surveyor has reason to believe that—

- (a) the certificate was issued on false or erroneous information; or
- (b) since the completion of any survey required by these Regulations, the equipment or machinery of the ship has sustained damage or is otherwise deficient.

(2) The Chief Marine Surveyor may require that an IBWM Certificate issued in respect of a Bermuda ship, which has expired or been cancelled, is surrendered to the Chief Marine Surveyor.

(3) In relation to a Bermuda ship, a person must not—

- (a) intentionally alter an IBWM Certificate;
- (b) intentionally make a false IBWM Certificate;
- (c) knowingly or recklessly provide false information in connection with a survey required under these Regulations;
- (d) with intent to deceive, use, lend, or allow to be used by another, an IBWM Certificate; or
- (e) fail to surrender an IBWM Certificate, where required to do so under paragraph (2).

(4) The master of a Bermuda ship in respect of which an IBWM Certificate has been issued must ensure that the document is readily available on board the ship, for inspection at all times.

(5) A direction given by the Minister under paragraph (2) may specify that an IBWM Certificate must be surrendered within such time and in such manner as the Minister may direct.

(6) Where a Bermuda ship is transferred to the flag of another Contracting State, and within three months after the date of transfer that Contracting State so requests, the Minister must send that Contracting State—

- (a) a copy of the IBWM Certificate issued in respect of that ship before its transfer; and
- (b) where available, a copy of the report of the most recent survey required by these Regulations in respect of that ship.

Procedure to be adopted when a ship is deficient

33 (1) Where the Certifying Authority determines that the condition of a Bermuda ship or its equipment—

- (a) does not correspond with the particulars of the IBWM Certificate issued in respect of that ship; or

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- (b) is such that the ship is not fit to proceed to sea without presenting an unreasonable threat of harm to the environment, human health, property or resources,

the Certifying Authority must inform the owner or master, of the corrective action which must be taken and give notice to the Chief Marine Surveyor.

(2) If the corrective action required under paragraph (1) is not taken within the period specified by the Certifying Authority (which must be a reasonable period), the Certifying Authority must withdraw the IBWM Certificate in respect of that ship and immediately notify—

- (a) the owner or master of the ship; and
- (b) the Chief Marine Surveyor.

(3) Where paragraph (2) applies in respect of a ship which is in a port of a Convention State other than Bermuda, the Certifying Authority must also notify—

- (a) the Competent Authority of the State in which the port is situated; and
- (b) if the ship is permitted to proceed to sea, the next port of call.

(4) Where a non-Bermuda ship registered in a Convention State is in a Bermuda harbour or port, and the Certifying Authority determines that it is necessary to withdraw the IBWM Certificate in respect of that ship, the Certifying Authority must notify the Competent Authority of that Convention State.

(5) Where notification has been received under paragraph (4), the Chief Marine Surveyor must take such steps as are necessary to ensure that the ship will not sail until it can proceed to sea, or leave the port for the purposes of proceeding to the nearest appropriate repair yard, without presenting an unreasonable threat of harm to the environment, human health, property or resources.

Arbitration on outcome of survey

34 (1) If an applicant is dissatisfied for any reason, with the outcome of a survey carried out in respect of a Bermuda ship, the applicant may serve a written notice on the responsible person within 21 days of receiving notification of that outcome—

- (a) stating that there is a dispute in relation to the survey; and
- (b) requesting that the dispute be referred to a single arbitrator.

(2) An arbitrator referred to in paragraph (1), must be appointed by agreement between the applicant and the responsible person.

(3) In default of an agreement between the applicant and the responsible person, the arbitrator is such person as may be appointed by the President or Vice President of the Chartered Institute of Arbitrators, Bermuda Branch, following a request made by—

- (a) a party, after giving written notice to the other party; or
- (b) the parties jointly.

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(4) An arbitrator appointed under this regulation has the powers of an inspector conferred by the relevant provisions of sections 219 and 220 of the Act.

(5) Any rules for arbitration set out in a notice issued or adopted by the Chief Marine Surveyor apply, unless alternative procedures are agreed between the applicant and the responsible person before the commencement of arbitration proceedings.

(6) In this regulation—

“applicant” means a person who makes an application for a survey required by these Regulations;

“responsible person” means—

- (a) the Certifying Authority responsible for the issue of the relevant IBWM Certificate in connection with which a survey required by these Regulations is carried out; or
- (b) in the case of a dispute relating to an additional survey required by regulation 24(3)(e), the Certifying Authority which issued the relevant IBWM Certificate in respect of the ship.

Prohibition on proceeding to sea without IBWM Certificate or appropriate documentation

35 (1) Subject to any exemption conferred by these Regulations, a Bermuda ship must not proceed to sea, or if it is already at sea, remain at sea, unless the requirements in paragraph (2) are met.

(2) The requirements are that the ship—

- (a) has been surveyed in accordance with the requirements of these Regulations or the Convention, as the case may be, which apply to the ship; and
- (b) is the subject of a valid IBWM Certificate.

(3) A non-Bermuda ship which, by virtue of the BWM Convention, is required to be issued with an IBWM Certificate, must not proceed to sea from a port in Bermuda, unless—

- (a) a Competent Authority of a Convention State has issued, and where appropriate endorsed, an IBWM Certificate in respect of that ship and that certificate (and, where appropriate, that endorsement) is still valid;
- (b) the Competent Authority of a State which is not a Convention State has issued, and where appropriate endorsed, a certificate in respect of that ship, which is deemed by the Chief Marine Surveyor to have the same force as a certificate issued in accordance with the requirements of the BWM Convention and that certificate (and, where appropriate, that endorsement) is still valid;
- (c) a surveyor—

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- (i) has carried out a survey of the ship as if regulation 24(3)(a) applied to that ship; and
 - (ii) is satisfied that the ship can proceed to sea without presenting an unreasonable threat of harm to the environment, human health, property or resources; or
- (d) a person having power to detain the ship—
- (i) is satisfied that the ship can proceed to sea for the purpose of proceeding to the nearest appropriate repair yard without presenting an unreasonable threat of harm to the environment, human health, property or resources; and
 - (ii) has permitted the ship to proceed.

**PART 4
ENFORCEMENT**

Inspection of ships

36 (1) In so far as sections 218, 219 and 220 of the Act apply in relation to a ship to which these Regulations apply, for the purposes of checking compliance with these Regulations, those sections have effect subject to the modifications in this regulation.

(2) The power in those sections to inspect a ship and its equipment, any part of the ship, any article on board and any documentation carried in the ship is, except in the circumstances specified in paragraph (3) or (4), limited to—

- (a) verifying whether an IBWM Certificate, as the case may be, has been issued in respect of the ship and is still valid;
 - (b) inspection of the ship's ballast water record book; and
 - (c) sampling a ship's ballast water in accordance with guidelines developed by the IMO, provided that the time required to analyse the samples must not be used as a basis for unduly delaying the operation, movement or departure of the ship.
- (3) The first set of circumstances are that—
- (a) the ship does not carry a valid IBWM Certificate; or
 - (b) the inspector has clear grounds for believing that—
 - (i) the condition of the ship or its equipment does not correspond substantially with the particulars of the certificate; or
 - (ii) the master or the crew—
 - (A) are not familiar with essential shipboard procedures relating to ballast water management; or

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(B) have not implemented such procedures.

(4) The second set of circumstances are that a Convention State—

- (a) has provided the Chief Marine Surveyor with evidence that a ship is operating or has operated in violation of a provision of the BWM Convention; and
- (b) has requested that the Chief Marine Surveyor inspect the ship.

(5) Where the circumstances in paragraph (3) or (4) apply, an inspector may carry out a detailed inspection of the ship.

(6) The power in section 219 or 220 of the Act, to go on board a ship may only be exercised if the ship in question is in a harbour or port in Bermuda, or at an offshore installation in Bermuda controlled waters.

(7) In exercising powers under this Part an inspector shall, as far as possible, ensure that a ship is not unduly detained or delayed.

Investigation of alleged violations by Bermuda ships

37 (1) Upon receiving evidence that a Bermuda ship has failed to discharge ballast water through ballast water management in accordance with these Regulations, the Chief Marine Surveyor must—

- (a) cause the matter to be investigated;
- (b) inform the IMO of the action taken; and
- (c) where a Convention State has reported the violation, inform that State, of the action taken.

(2) If the Chief Marine Surveyor has not taken any action within one year of the date on which the Chief Marine Surveyor received the evidence mentioned in paragraph (1), the Chief Marine Surveyor must inform the Convention State which reported the violation that, no action has been taken.

(3) Where a request for an investigation is received from any Party to the Convention, an authorised officer may inspect a ship when it enters port or an offshore terminal, and the report of such investigation shall be sent to the Convention State requesting it and to the Competent Authority of the ship concerned so that appropriate action may be taken.

Non-compliant samples of ballast water

38 (1) Where—

- (a) the circumstances set out in regulation 36(3) or (4) apply; or
- (b) a sampling of ballast water described in regulation 36(2)(c) from a ship in Bermuda or Bermuda controlled waters indicates that the ship poses a threat to the environment, human health, property or resources,

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the Chief Marine Surveyor may issue a discharge prohibition notice to the master of the ship.

(2) The owner and master of a ship must comply with a discharge prohibition notice issued under paragraph (1).

(3) In this regulation, “discharge prohibition notice” means a notice prohibiting the ship from discharging ballast water until the threat of harm to the environment, human health, property or resources is removed.

(4) Where a discharge prohibition notice is issued under paragraph (1), the Chief Marine Surveyor shall immediately notify—

- (a) the ship’s Certifying Authority;
- (b) in the case of a non-Bermuda ship, the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the Competent Authority of that State; and
- (c) if the ship is permitted to proceed to sea, the next port of call.

Non-compliant ballast water systems

39 (1) Where any person exercising a power of inspection under section 219 or 220 of the Act finds on a ship, a ballast water management system that does not comply with these Regulations, that person may direct that the owner and master must take steps within a specified period (which must be reasonable) to ensure that the system complies with these Regulations.

(2) Where a direction is given under paragraph (1), the person giving the direction shall immediately notify—

- (a) the ship’s Certifying Authority;
- (b) in the case of a non-Bermuda ship, the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the Competent Authority of that State; and
- (c) if the ship is permitted to proceed to sea, the next port of call.

PART 5

DETENTION

Detention of ships

40 (1) Where any of the conditions in paragraphs (2) and (3) are satisfied, a ship is liable to be detained until the CMS is satisfied that it can proceed to sea without presenting any unreasonable threat of harm to the environment, human health, property or resources.

(2) The first condition is that a Certifying Authority has made a determination in relation to the ship under regulation 33(1).

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(3) The second condition is that an inspector or surveyor has clear grounds for believing that—

- (a) an IBWM Certificate, is required to have been issued in respect of the ship but has not been issued or endorsed as required, or has been issued or endorsed but is not valid;
- (b) documentation referred to in regulation 35 is required to have been issued or endorsed in respect of the ship but has not been issued or endorsed, or has been issued or endorsed but is not valid;
- (c) the condition of a ship or its equipment does not correspond substantially with the particulars of an IBWM Certificate or other appropriate documentation;
- (d) the master or crew of the ship are not familiar with essential shipboard procedures relating to ballast water management;
- (e) an offence under regulation 35 is being committed in respect of the ship; or
- (f) the owner and master have not complied with a discharge prohibition notice issued under regulation 38.

(4) A person having powers to detain a ship may, provided that person is satisfied that it does not present a threat of harm to the environment, human health, property or resources, permit a ship which is liable to be detained under paragraph (1), to proceed to sea for the purpose of—

- (a) discharging ballast water; or
- (b) proceeding to the nearest appropriate repair yard or reception facility available.

General provisions relating to detention

41 (1) The power under regulation 40 to detain a ship may only be exercised if the ship in question is—

- (a) in a port or harbour in Bermuda; or
- (b) at an offshore installation in Bermuda controlled waters.

(2) Section 242 of the Act applies where a ship is liable to be detained under regulation 40, as if references to detention of a ship under the Act were references to detention of the ship in question under regulation 40.

(3) Where a ship is liable to be detained under regulation 40, the person detaining the ship must serve on the master, a detention notice which—

- (a) states the grounds of the detention; and
- (b) requires the terms of the notice to be complied with until the ship is released by any person mentioned in section 242 of the Act.

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(4) Where a ship is detained, the Chief Marine Surveyor must immediately inform—

- (a) the ship's Certifying Authority; and
- (b) in the case of a non-Bermuda ship, the consul or diplomatic representative of the State whose flag the ship is entitled to fly or the Competent Authority of that State.

(5) Where a ship is detained under regulation 40(3)(e), a person having power to detain the ship must, at the request of the owner or master, immediately release the ship—

- (a) if no proceedings for an offence under these Regulations are instituted within the period of seven days beginning with the day on which the ship is detained;
- (b) if proceedings for any such offence having been instituted within that period, are concluded without the owner or master being convicted;
- (c) if either—
 - (i) the sum of \$50,000 is paid to the Minister by way of security; or
 - (ii) security which, in the opinion of the Minister, is satisfactory and is for an amount not less than \$50,000 is given to the Minister, by or on behalf of the owner or master;
- (d) where the owner or master is convicted of any such offence, if any costs or expenses ordered to be paid by that person, and any fine imposed on that person, have been paid; or
- (e) if 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 and any bond or other financial security ordered by such court or tribunal is posted.

(6) The Administration must repay any sum paid in pursuance of paragraph (5)(c) or release any security so given—

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

(7) Where a sum has been paid, or security has been given, by any person in pursuance of paragraph (5)(c) and the owner or master is convicted of an offence under these Regulations, the sum so paid or the amount made available under the security, must be applied as follows—

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

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(b) next, in payment of any fine imposed by the Court,
and any balance must be repaid to the first-mentioned person.

(8) For the purposes of this regulation, proceedings for an offence under these Regulations are instituted when persons are notified and the summons is issued.

Power of harbour master to detain

42 (1) Where the harbour master has clear grounds for believing that an offence comprising a contravention of these Regulations has been committed in relation to a ship, the harbour master shall report to the CEO of the BSMA, who may detain that ship.

(2) Section 242 of the Act applies to a detention under paragraph (1).

(3) Where a ship is liable to be detained under this regulation, the harbour master must serve on the master of the ship a detention notice which—

(a) states the grounds for the detention; and

(b) requires the terms of the notice to be complied with until the ship is released by the Administration.

(4) Where a ship is detained under paragraph (2), the harbour master must immediately release the ship if any of the circumstances in regulation 41(5) apply.

(5) Regulation 41(2) to (5) applies in respect of a detention under this regulation.

Duty of harbour master to report deficient ships

43 If the harbour master has reason to believe that a ship, which does not comply with the requirements of these Regulations is about to enter or leave a port or harbour, the harbour master must immediately report the matter to the Chief Marine Surveyor.

Arbitration

44 (1) Any question as to whether a matter falling within paragraph (2), constituted a valid basis for the inspector's opinion must, if the master or owner of the ship so requires, by a notice given to the inspector within 21 days from the service of the detention notice, be referred to a single arbitrator appointed by agreement between the parties, for that question to be decided by the arbitrator.

(2) A matter falls within this paragraph if it is specified in relation to a ship, in a detention notice in pursuance of a power of detention to which this regulation applies, in connection with any opinion formed by the inspector.

(3) Where a notice is given by the master or owner of the ship in accordance with paragraph (1), the giving of the notice does not suspend the operation of the detention notice.

(4) The arbitrator must have regard to any matter not specified in the detention notice which appears to the arbitrator to be relevant as to whether the ship was or was not liable to be detained.

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(5) Where the arbitrator decides, as respects a matter to which the reference relates, that in all the circumstances the matter did not constitute a valid basis for the inspector's opinion, the arbitrator must—

- (a) cancel the detention notice; or
- (b) affirm it with such modifications as the arbitrator may in the circumstances think fit.

(6) In any case other than one described in paragraph (5), the arbitrator must affirm the detention notice in its original form.

(7) The arbitrator must include in his decision a finding whether there was or was not a valid basis for the detention of the ship.

(8) A person is not qualified for appointment as an arbitrator under this regulation unless he is—

- (a) a person holding a certificate of competency as a master mariner or as a marine engineer officer class 1, or a person holding a certificate equivalent to any such certificate;
- (b) a naval architect;
- (c) a person falling within paragraph (9); or
- (d) a person with special experience in shipping matters, the fishing industry, or of activities carried on in ports.

(9) A person falls within this paragraph if that person is qualified to be appointed to a high judicial office in Bermuda.

(10) In connection with functions under this regulation, an arbitrator has the powers conferred on an inspector by section 220 of the Act.

Compensation for undue delay or unjustified detention

45 (1) If on a reference under regulation 44(4) relating to a detention notice, the arbitrator decides that the owner has proved—

- (a) that the matter complained of did not constitute a valid basis for the inspector's opinion; and
- (b) that there were no reasonable grounds for the issue of the detention notice, the arbitrator must award the owner of the ship such compensation in respect of any loss suffered in consequence of, or as the case may be, the detention of the ship, as the arbitrator thinks fit.

(2) Any compensation awarded under this regulation is payable by the Minister.

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**PART 6
OFFENCES**

Offences and penalties

46 (1) Any contravention of—

- (a) regulation 10, 11, 12(1), (3) or (8), 13(3), 17(1), 21(3), 23(2) or (3), 26(1), (2) or (3), 33(2), 35 or 38(2) is an offence by the owner and by the master of the ship in question;
- (b) regulation 12(4), (5) or (6), 16(1), (2) or (6), or 33(4) is an offence by the master of the ship in question; or
- (c) regulation 12(7), 21(3) or 33(3) is an offence by the person in question.

(2) An offence under paragraph (1) is punishable on summary conviction, by a fine not exceeding \$10,000.

(3) Where an offence under these Regulations is committed, or would be committed except for the operation of regulation 47, by any person due to the act or default of some other person, that other person also commits the offence, and a person may be charged with and convicted of an offence by virtue of this paragraph, whether or not proceedings are taken against the first person.

Service of documents

47 Section 249 of the Act applies to proceedings for an offence under these Regulations as it applies to proceedings for an offence under the Act, as if—

- (a) in the case of an offence in respect of a ship other than an offshore installation, the reference to the owner were to the owner, manager or demise charterer; and
- (b) in the case of an offence in respect of an offshore installation, the reference to—
 - (i) the owner of the ship were to the owner of the offshore installation; and
 - (ii) the master of the ship were to the manager of the offshore installation.

Defence

48 In any proceedings for an offence under these Regulations, it is a defence for the person charged to prove that, that person took all reasonable steps and exercised all due diligence to ensure that the regulation in question was complied with.

Restriction on jurisdiction over offences outside Bermuda

49 (1) Where there has been a contravention of these Regulations in respect of a non-Bermuda ship in the internal waters, territorial sea or exclusive economic zone of

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another Convention State, proceedings in respect of that offence must not be instituted in Bermuda unless—

- (a) that Convention State, the flag State of the ship in question or a State harmed or threatened with harm in relation to the marine environment, human health, property or resources, as a result of the offence, requests that proceedings be taken; or
- (b) the offence has harmed or threatened with harm in relation to the marine environment, human health, property or resources in Bermuda or Bermuda controlled waters.

(2) Where proceedings have been instituted but not concluded, they must be suspended upon the request of the Convention State in question and the Chief Marine Surveyor must send all the evidence, court records and documents relating to the case, together with any sum paid or security given, to the Convention State.

(3) In this regulation, “exclusive economic zone”, in relation to a Convention State, means the area beyond and adjacent to the territorial seas of that State, but not extending beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured.

PART 7

COMMUNICATION OF INFORMATION

Suspension of proceedings at flag State request

50 (1) This regulation applies to proceedings instituted but not concluded in Bermuda in respect of a contravention of these Regulations committed outside Bermuda controlled waters by a non-Bermuda ship.

(2) Subject to paragraph (3), any proceedings must be suspended if the Court is satisfied that the flag State of the ship in question has instituted proceedings corresponding to the proceedings in Bermuda in respect of the contravention of that provision within six months of the institution of the proceedings in Bermuda.

(3) Paragraph (2) does not apply—

- (a) where the contravention of these Regulations resulted in serious pollution in Bermuda; or
- (b) where the Chief Marine Surveyor certifies that the flag State in question has repeatedly disregarded its obligation to enforce effectively, the requirements of the BWM Convention in respect of its ships.

(4) Where proceedings instituted by the flag State have been brought to a conclusion, the suspended proceedings must be terminated.

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Communication of information

51 The BSMA shall report to the IMO and, where appropriate, make available to other Parties, the following information—

- (a) any requirements and procedures relating to ballast water management, including—
 - (i) to these Regulations;
 - (ii) any notices or instructions issued under these Regulations; and
 - (iii) any guidance or guidelines for implementation of the Convention;
- (b) the availability and location of any reception facilities for the environmentally safe disposal of ballast water and sediments; and
- (c) any requirements imposed for information from a ship which is unable to comply with these Regulations or the Convention for reasons specified in Regulations A-3 and B-4 of the Convention.

Made this 27th day of December 2023

Minister of Transport

[Operative Date: 28 December 2023]