CONTROL AND MANAGEMENT OF SHIPS’ BALLAST WATER IN THE ADRIATIC SEA REGION
- A COLLECTION OF LEGAL TEXTS -
CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER IN THE ADRIATIC SEA REGION
A COLLECTION OF LEGAL TEXTS
“CONTROL AND MANAGEMENT OF SHIPS’ BALLAST WATER IN THE ADRIATIC SEA REGION. A COLLECTION OF LEGAL TEXTS”

Editors: Giulietta Rak (ISPRA), Giordana De Vendictis (ISPRA)
Contributors: Matej David, Sabina Dolić, Stephan Gollasch, Darinka Joksimović, Jerina Kolitari, Maja Markovčić Kostelac, Sandro Vidas, Damir Zec
Preface and introduction: Giulietta Rak - To contact the author: giulietta.rak@isprambiente.it

We thank Paola Giambanco (ISPRA) for her review of English texts.

ISPRA, Documenti tecnici, 2016

Reproduction of original texts is authorized provided that the source is acknowledged

Disclaimer and acknowledgements
This publication is meant for education and training purposes only. No formal reference shall be made to legal texts as reproduced herewith. For original texts please, refer to the competent international organizations and/or to the competent national authorities.

The partners of the BALMAS project are not acting as representatives of any Government or of any other authority or organization. Any contribution by officials and experts is made in their personal capacity. Neither ISPRA nor any person acting on its behalf is responsible for the use that might be made of the information contained in this publication.

This publication has been produced with the financial assistance of the IPA Adriatic Cross-Border Cooperation Programme. The contents of this publication are the sole responsibility of ISPRA and can under no circumstances be regarded as reflecting the position of the IPA Adriatic Cross-Border Cooperation Programme Authorities.

Material from the IMO website www.imo.org is reproduced with the permission of the International Maritime Organization (IMO), which does not accept responsibility for the correctness of the material as reproduced: in case of doubt, IMO’s authentic text shall prevail. Readers should check with their national maritime Administration for any further amendments or latest advice. International Maritime Organization, 4 Albert Embankment, London, SE1 7SR, United Kingdom.

MONGOOS images contained in the Decision IG.20/11, reproduced in document UNEP(DEPI)/MED IG.20/8, were produced by G. Coppini (CMCC), V. Lyubarstev (CMCC) and Nadia Pinardi (INGV and CMCC) as part of the activities of MOON (nowadays MONGOOS Mediterranean Oceanography Network for Global Ocean Observing System) within the framework of the MONGOOS&REMPEC collaboration activities. The source of other images contained in the same decision and not produced by MOON is UNEP/MAP.

Published by: Tiburtini s.r.l. Via delle Case Rosse 23 00131 Rome - Italy
Cover design: Franco Iozzoli, Elena Porrazzo (ISPRA)
Cover photo: Paolo Orlandi (ISPRA)
Graphic layout: Tiburtini s.r.l.
ISPRA editorial series co-ordination: Daria Mazzella

Printed in recycled paper, FSC certificated

©2016 Istituto Superiore per la Protezione e la Ricerca Ambientale (ISPRA) – Rome, Italy
www.isprambiente.gov.it
INDEX

PREFACE

1. INTRODUCTION

2. GLOBAL REGIME AND GUIDELINES

2.1. International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004

2.2. IMO guidelines for the uniform implementation of the BWM Convention

2.2.1. Resolution MEPC.152(55) adopted on 13 October 2006 - Guidelines for sediment reception facilities (G1)

2.2.2. Resolution MEPC.173(58) adopted on 10 October 2008 - Guidelines for ballast water sampling (G2)

2.2.3. Resolution MEPC.123(53) adopted on 22 July 2005 - Guidelines for ballast water management equivalent compliance (G3)

2.2.4. Resolution MEPC.127(53) adopted on 22 July 2005 - Guidelines for ballast water management and development of ballast water management plans (G4)

2.2.5. Resolution MEPC.123(53) adopted on 22 July 2005 - Guidelines for ballast water management and development of ballast water management plans (G4)

2.2.6. Resolution MEPC.153(55) adopted on 13 October 2006 - Guidelines for ballast water reception facilities (G5)

2.2.7. Resolution MEPC.124(53) adopted on 22 July 2005 - Guidelines for ballast water exchange (G6)

2.2.8. Resolution MEPC.162(56) adopted on 13 July 2007 - Guidelines for risk assessment under Regulation A-4 of the BWM Convention (G7)

2.2.9. Resolution MEPC.174(58) adopted on 10 October 2008 - Guidelines for approval of ballast water management systems (G8)

2.2.10. Resolution MEPC.169(57) adopted on 4 April 2008 - Procedure for approval of ballast water management systems that make use of active substances (G9)

2.2.11. Resolution MEPC.140(54) adopted on 24 March 2006 - Guidelines for approval and oversight of prototype ballast water treatment technology programmes (G10)

2.2.12. Resolution MEPC.149(55) adopted on 13 October 2006 - Guidelines for ballast water exchange design and construction standards (G11)

2.2.13. Resolution MEPC.209(63) adopted on 2 March 2012 - Guidelines on design and construction to facilitate sediment control on ships (G12)

2.2.14. Resolution MEPC.161(56) adopted on 13 July 2007 - Guidelines for additional measures regarding ballast water management including emergency situations (G13)

2.2.15. Resolution MEPC.151(55) adopted on 13 October 2006 - Guidelines on designation of areas for ballast water exchange (G14)

2.3. Other IMO resolutions and guidelines related to the implementation of the BWM Convention

2.3.1. Resolution MEPC.252(67) adopted on 17 October 2014 - Guidelines for port State control under the BWM Convention

2.3.2. Resolution MEPC.253(67) adopted on 17 October 2014 - Measures to be taken to facilitate entry into force of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004

2.3.3. Resolution MEPC.228(65) adopted on 17 May 2013 - Information reporting on type approved ballast water management systems
<table>
<thead>
<tr>
<th>Section</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.3.4.</td>
<td>Resolution MEPC.206(62) adopted on 15 July 2011 - Procedure for approving other methods of ballast water management in accordance with regulation B-3.7 of the BWM Convention</td>
</tr>
<tr>
<td>2.3.5.</td>
<td>Resolution MEPC.188(60) adopted on 24 March 2010 - Installation of ballast water management systems on new ships in accordance with the application dates contained in the ballast water management Convention (BWM Convention)</td>
</tr>
<tr>
<td>2.3.6.</td>
<td>Resolution MEPC.163(56) adopted on 13 July 2007 - Guidelines for ballast water exchange in the Antarctic Treaty area</td>
</tr>
<tr>
<td>2.3.7.</td>
<td>Resolution A.1088(28) adopted on 4 December 2013 - Application of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments, 2004</td>
</tr>
<tr>
<td>2.4.</td>
<td>IMO BWM circulars related to the implementation of the BWM Convention</td>
</tr>
<tr>
<td>2.4.1.</td>
<td>IMO BWM.2/Circ.52 - Guidance on entry or re-entry of ships into exclusive operation within waters under the jurisdiction of a single Party</td>
</tr>
<tr>
<td>2.4.2.</td>
<td>IMO BWM.2/Circ.46 - Application of the BWM Convention to Mobile Offshore Units</td>
</tr>
<tr>
<td>2.4.3.</td>
<td>IMO BWM.2/Circ.45 - Clarification of “major conversion” as defined in regulation A-1.5 of the BWM Convention</td>
</tr>
<tr>
<td>2.4.4.</td>
<td>IMO BWM.2/Circ.44 - Options for ballast water management for Offshore Support Vessels in accordance with the BWM Convention</td>
</tr>
<tr>
<td>2.4.5.</td>
<td>IMO BWM.2/Circ.43 - Amendments to the Guidance for Administrations on the type approval process for ballast water management systems in accordance with Guidelines (G8)</td>
</tr>
<tr>
<td>2.4.6.</td>
<td>IMO BWM.2/Circ.42/Rev.1 - Guidance on ballast water sampling and analysis for trial use in accordance with the BWM Convention and Guidelines (G2)</td>
</tr>
<tr>
<td>2.4.7.</td>
<td>IMO BWM.2/Circ.40 - Issuance of Ballast Water Management Certificates prior to entry into force of the BWM Convention and Ballast Water Management Plans approved according to resolution A.868(20)</td>
</tr>
<tr>
<td>2.4.8.</td>
<td>IMO BWM.2/Circ.37 - Information that should be made available in proposals for approval of ballast water management systems in accordance with the Procedure for approval of ballast water management systems that make use of Active Substances (G9)</td>
</tr>
<tr>
<td>2.4.9.</td>
<td>IMO BWM.2/Circ.33 - Guidance on scaling of ballast water management systems</td>
</tr>
<tr>
<td>2.4.10.</td>
<td>IMO BWM.2/Circ.32 - Applicability of the Ballast Water Management Convention to hopper dredgers</td>
</tr>
<tr>
<td>2.4.11.</td>
<td>IMO BWM.2/Circ.29/Rev.1 - Clarification regarding the application dates contained in regulation B-3 of the BWM Convention</td>
</tr>
<tr>
<td>2.4.12.</td>
<td>IMO BWM.2/Circ.27 - Framework for determining when a Basic Approval granted to one ballast water management system may be applied to another system that uses the same Active Substance or Preparation</td>
</tr>
<tr>
<td>2.4.13.</td>
<td>IMO BWM.2/Circ.21 - Engineering Questionnaire on Ballast Water Management Systems</td>
</tr>
<tr>
<td>2.4.14.</td>
<td>IMO BWM.2/Circ.20 - Guidance to ensure safe handling and storage of chemicals and preparations used to treat ballast water and the development of safety procedures for risks to the ship and crew resulting from the treatment process</td>
</tr>
<tr>
<td>2.4.15.</td>
<td>IMO BWM.2/Circ.17 - Guidance document on arrangements for responding to emergency situations involving ballast water operations</td>
</tr>
<tr>
<td>2.4.16.</td>
<td>IMO BWM.2/Circ.13/Rev.3 - Methodology for information gathering and conduct of work of the GESAMP-BWWG</td>
</tr>
<tr>
<td>2.4.17.</td>
<td>IMO BWM.2/Circ.8 - Harmonized implementation of the Guidelines for approval of Ballast Water Management Systems (G8)</td>
</tr>
</tbody>
</table>
INDEX

2.4.18.IMO BWM.2/Circ.7 - Interim Survey Guidelines for the purpose of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments under the Harmonized System of Survey and Certification (Resolution A.948(23)) 347

3. OFFICIAL DOCUMENTS ON BALLAST WATER MANAGEMENT IN THE MEDITERRANEAN SEA REGION 357

3.1. The 2012 Mediterranean Strategy Decision IG.20/11 of the 17th Ordinary Meeting of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols - Regional strategy addressing ship’s ballast water management and invasive species (extracts) 359

3.2. Harmonized Voluntary Arrangements for Ballast Water Management in the Mediterranean Region IMO BWM.2/Circ.35 - Communication received from the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC) 393

3.3. General Guidance on the Voluntary Interim Application of the D-1 Ballast water Exchange Standard by vessels operating between the Mediterranean Sea and the North-East Atlantic and/or the Baltic Sea IMO BWM.2/Circ.39 - Communication received from the Administration of Croatia 399

4. THE ADRIATIC SEA: NATIONAL LAWS AND REGULATIONS ON SHIPS’ BALLAST WATER 407

4.1. Albania 409
2008 Ratification Law (Original text and unofficial translation) 411

4.2. Croatia 413
2010 Ratification Law (Original text and unofficial translation) 415
2004 Maritime Code, as amended (Extracts) (Original text and unofficial translation) 416
2012 Ordinance on Ballast Water Management and Control, as amended (Original text and unofficial translation) 418

4.3. Italy 437
2010 Decree Establishing National Procedures for the Issuance of Type Approval Certificates for Ballast Water Systems Produced by Italian Manufacturers, as amended (Original text and unofficial translation) 439

4.4. Montenegro 445
2011 Ratification Law (Original text and unofficial translation) 447
2011 Legislation on the Prevention of Pollution from Ships, as amended (Extracts) (Original text and unofficial translation) 448

ADDENDUM: LEGAL TEXTS ON PORTS INSPECTIONS 459

- Paris Memorandum of Understanding on port State control 461
PREFACE

The United Nations had recognized the transfer of harmful organisms and pathogens (HAOPs) across natural barriers as one of the greatest pressures to the world’s oceans and seas, causing global environmental changes, threatening human health, property and resources. Among the activities causing such pressure is international shipping.

The negative effects of the discharge at sea of ballast waters which, even if not mixed with cargo residues, may contain harmful organisms and pathogens, are likely to be more dramatic if considering the recipient environment feature. In the Adriatic Sea, a semi-enclosed basin wedged within the Mediterranean Sea, a huge volume of shipping coexists with vulnerable ecosystems and significant economies which highly depend on the sea qualities. Environment, human health, tourism, fisheries as well as other sea uses and values might be impaired by this form of biological pollution.

Along these considerations, the European Union has included the protection from ballast water pollution among strategic priorities for funding under the IPA Adriatic cross-border cooperation programme and, in 2012, the BALMAS project “Ballast water management system for Adriatic Sea protection” received financial assistance. The BALMAS activities focus on the development of knowledge and tools, including the establishment of links between experts and national authorities from Adriatic partner’s countries, supporting a common Adriatic cross-border system for the control and management of risks deriving from the HAOPs introduction. Such system would facilitate the development of consistent measures and coherent responses for the whole basin.

Nowadays, the global legal terms for the control and management of ships’ ballast hinge upon the entry into force of the 2004 International Convention on the Control and Management of Ships’ Ballast Waters and Sediments (the BWM Convention), as complemented by a number of international guidance documents. Pending the entry into force of these global obligations, States have approved national measures on ballast water management or have developed regional policies acting through international organizations. In the Adriatic Sea, three bordering States already ratified the BWM Convention and approved measures on the same matter. In other Adriatic countries, administrative arrangements have been set in connection to the forthcoming global standards.

The existing legal and policy framework is a fundamental for the BALMAS Project, which has dedicated a specific work package to this end. This book was realized with the aim to enhance acquaintance of the upcoming rules for authorities, interested bodies and other stakeholders. An appropriate familiarity with the existing framework of policies and commitments is a pre-requisite of any action – either public or private, international or local – aiming at managing the HAOPs transfer through ballast water and to keep the related threats under control. As it was underlined, training of responsible parties in time to comply with the enforcement of the BWM Convention is the greatest challenge to the twenty year-long effort to standardize the management of ballast water globally. In the Adriatic region, education and training could benefit from the key legal materials of this book, which includes the formal instruments currently available.

Because regulations are frequently amended, this book has been printed in a limited edition, whereas a user-friendly pdf version will be downloadable from the project website (www.balmas.eu).
1. INTRODUCTION
The presence of marine “invasive”, “alien” or other way "harmful" species at sea has been recognized as a major threat for the marine environments, human health and marine/maritime economies, such as fisheries and tourism. At different levels, different sectors of law are addressing related concerns, thus establishing obligations on the presence of these species and on the management of those human activities capable to introduce them into environments. International shipping is among these activities because of the uptake and discharge of vessel’s ballast waters, which is a routine operation for the overwhelming majority of ships engaged in international trade. The international maritime community committed to the adoption of global standards on the matter, facilitated to this end by the agency within the UN system specialized on international shipping and maritime issues, the International Maritime Organization (IMO). According to its founding treaty, the IMO provides machinery for co-operation among Governments for the prevention and control of marine pollution from ships and encourages the general adoption of the highest practicable standards on international shipping. The IMO discussion on the ballast water theme started in 1991 and made a fundamental step forward with the signature of the text of the International Convention for the Control and Management of Ships’ Ballast Water and Sediments (London 2004).

At the moment of publishing this collection of legal materials, the BWM Convention’s entry into force is still pending. As it happens for all shipping-related multilateral agreements, the conditions set for its entry into force are linked not only to the number of ratifying States but also to the percentage of the world’s tonnage fleet that these States represent. Several elements are delaying the coming into force of the new rules: from the technical complexity of the standards implementation, to the extent of the private investments needed. Following the Convention’s text adoption, an intensive cooperation is taking place within the IMO’s Marine Environment Protection Committee. Attempting to clear the picture, guiding the standards implementation and smoothing constrains, this international process resulted in a huge amount of legal materials so far. Most of these materials are collected and organized in this book, which aims to facilitate their consultation and to support both the BALMAS project training activities and further training that might take place in the Adriatic region.

Although many environmental law materials were identified as relevant for the subject, in order to maintain the focus on shipping matters, this book includes only those documents specifically referring to the control and management of ships’ ballast waters. Other documents connected to the broader environmental sector of law have been mentioned in different BALMAS project publications.
The selected legal materials have been organized into three chapters focusing on the following different levels: the global regime and related international guidance (Chapter 2), the Mediterranean region (Chapter 3) and the national legislation of countries bordering the Adriatic Sea (Chapter 4). Following the consultation of the project partners, it was deemed important to include an Addendum on port State control, a crucial theme for the future obligations compliance and enforcement.

Chapter 2 includes the text of the BWM Convention (paragraph 2.1) as well as a number of guidelines and circulars developed within the IMO so far. Guidelines are grouped according to whether they have been specifically referred to in the Convention or their adoption was considered opportune at a later stage (respectively, paragraph 2.2. and 2.3.). As international rule making is an ongoing process, at the moment of the publication of this book some of these guidelines are under review (e.g. G8 Guidelines). Paragraph 2.4. contains a selection of IMO Circulars with a general relevance according to the periodical review made by the Organization. Circulars included are those issued by the Organization under the symbol “BWM.2/Circ.” as their contents are related to technical aspects of ballast water management.

In order to comprehensively capture the Adriatic Sea picture, Chapter 3 includes implementing decisions adopted at Mediterranean level. Differently from Multilateral Environmental Agreements, global shipping agreements do not have a regional legal projection, even if cooperation would be needed at the marine regions level in order to seek a smooth and, what is equally important, effective implementation. Cooperation on ballast water management produced relevant decisions for different marine regions of the world. In the Mediterranean Sea, the forum for such decisions has been the region’s environmental framework agreement, the Barcelona Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (last amended in 1995), whose Secretariat functions are performed by the United Nations Environment Programme (UNEP). States Parties to the Barcelona Convention approved a number of acts, including the Regional strategy addressing ship’s ballast water management and invasive species, which can be considered as non-mandatory, beforehand implementations of the BWM Convention obligations. It can be worth noting that, within the challenging environmental cooperation in the region, the discussions on shipping-related issues are supported by the work of a jointly UNEP/MAP-IMO administered regional centre, namely the Regional Marine Pollution Emergency Response Centre for the Mediterranean Sea (REMPEC).

Chapter 4 includes national legislation and regulations approved by States bordering the Adriatic Sea, three of which have already ratified the BWM Convention (e.g. Albania, Croatia and Montenegro). National legal materials are reproduced in the original language version with a courtesy English translation provided by the BALMAS project partners. Those legal acts which, although relevant to the theme, do not directly implement the BWM Convention, have been reported in other BALMAS project publications.

Finally, the Addendum on port State control includes acts proceeding from different legal levels: the Paris Memorandum of Understanding on port State control, an inter-governmental agreement among maritime authorities from Europe plus Russian Federation and Canada, which has been already amended to include the reference to the 2004 BWM Convention; and the European Union Directive No. 2009/16/EC of 23 April 2009 on port State control. Both legal instruments are legally binding only for three out of six BALMAS partners countries, however their outstanding importance for the BWM Convention compliance and enforcement has been recognized by all partners, leading to include related texts in this collection.

---

8 The Organization issues Circulars with different symbols in order to facilitate the prompt identification of related content: under the symbol “BWM.1/Circ.” are those related to the status of the BWM Convention and under the symbol “BWM.2/Circ.” those related to technical aspects of ballast water management.
9 For further information on the UNEP/MAP and on relevant regional agreements see www.unepmap.org
10 For details see RAK G. 2016. BALMAS Project Final Report, cit. above, footnote 1
11 See above, footnote 1.