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*The Circular should be entered into a special diagram or as appropriate in the latest editions of relevant NMA publications and kept until the next editions.*

## New Regulations on ballast water management on ships and mobile offshore units

### 1. Introduction

The Norwegian Maritime Authority has laid down rules implementing the International Convention for the Control and Management for Ships' Ballast Water and Sediments 2004 (BWM Convention) in Norwegian legislation.

In addition to adopting separate Regulations implementing the BWM Convention, the NMA has laid down amendments to the following regulations:

- Regulations of 15 September 1992 No. 693 on the form and keeping of log books for ships and mobile offshore units
- Regulations of 27 June 2008 No. 744 on the obligation to notify and report marine accidents and other incidents at sea
- Regulations of 24 November 2014 No. 1458 on port State control
- Regulations of 22 December 2014 No. 1893 on supervision and certificates for Norwegian ships and mobile offshore units.

The new Regulations on ballast water management repeal and replace the Regulations of 7 July 2009 No. 992 on the prevention of transfer of alien organisms via ballast water and sediments from ships.

*The Norwegian version of the Regulations of 8 September 2017 on ballast water management was published with a few misprints:*

- *wrong year in section 13 second and third paragraphs*
- *missing section number in the reference of section 13 final paragraph (c) item 4*
- *missing check box in the template for ballast water record book in Appendix 2*

The Norwegian Maritime Authority's Circulars consist of 2 series, **Series R: Regulations, Acts and Conventions, and Series V: Guidelines and interpretations.**

- *missing apostrophe in the table "Coordinates for exchange area 1" in Appendix 1.*

*A corrected version is published with this Circular.*

## **2. The consultation**

Draft Regulations and proposed regulatory amendments were sent for review to the bodies concerned on 5 May 2017, and the deadline for submitting comments was 5 August 2017. 21 bodies chose to answer the consultation, whereof 7 had comments to the amendments.

*The Norwegian Maritime Authority has found it necessary to make some adjustments after the closing date of the consultation. These are outlined below.*

In terms of the scope of application of the Regulations, the proposal's exemption for government-owned ships was due to an error. Such an exemption was not implemented in proposed amendments to other regulations either. The exemption has been omitted from the adopted version of the Regulations.

The NMA wishes to apologise for the uncertainty this has caused. At the same time, government-owned ships are subject to the same environmental requirements as the rest of the commercial fleet, and there is little to indicate that government-owned ships will automatically be exempt from the requirements of the BWM Convention. As far as we know, the government-operated part of the fleet has already installed ballast water treatment technology to a certain degree and, like the rest of the fleet, plans to phase in the requirements. Section 2 of the Ship Safety and Security Act sets out a separate legal basis for the Norwegian Armed Forces' vessels to be either fully or partly exempt from the provisions of the Ship Safety and Security Act by regulation. The Ministry of Defence has taken advantage of this opportunity by the *Regulations of 29 June 2007 No. 819 on exemptions from provisions of the Act of 16 February 2007 No. 9 relating to ship safety and security (Ship Safety and Security Act) for ships belonging to the Norwegian Armed Forces or ships used in such service*. These Regulations also include the prohibition against pollution, in which the legislation for the ballast water management partly has its legal basis.

The NMA further comments that the IMO Member States agreed on a new phase-in plan for the requirements of the BWM Convention at the 71st session of the Marine Environment Protection Committee (MEPC) in July 2017. The final Regulations have been adjusted in line with this. The final deadline for complying with the rules on ballast water management will thus be extended to 8 September 2024. The more detailed phase-in intervals are incorporated in section 13 of the Regulations.

Section 7 of the new Regulations on ballast water management explicitly stipulates that the plan for ballast water management must be approved. This was only indirectly indicated by the draft's reference to MEPC.127(53), but is the current law pursuant to the BWM Convention and a continuation of the rules of the outgoing Regulations.

The amendments to the Regulations of 22 December 2014 No. 1893 on supervision and certificates for Norwegian ships and mobile offshore units include the addition of a new last paragraph to section 34a. The addition reflects the previous arrangement for classed ships,

where up until the entry into force of the BWM Convention, a Statement of Compliance has been issued to prove that the ship complies with the requirements of the BWM Convention. In a specified transition phase, such ships will be able to operate legally without a formal Ballast Water Management Certificate. The rule corresponds with the instructions communicated to the recognised classification societies.

Minor editorial changes have also been made to make the provisions comply with other regulations, primarily to the new survey provisions.

### **3. The background for the new rules**

The BWM Convention enters into force on 8 September 2017, and by that time, it shall be implemented into Norwegian legislation.

Ballast water is taken aboard near the coastline and transported by the ship to the next port of call, where water may be discharged or exchanged. On a large ship, the ballast tanks may hold millions of litres of water, and this water may contain organisms that do not occur naturally in the ecosystem where it is pumped out. When the ballast water is discharged in a port or coastal area, the organisms in the water may settle in the new environment and destroy the local plant and animal life. In recognition of this risk, the IMO<sup>1</sup> established the BWM Convention in 2004, but it was not until 8 September 2016 that a sufficient number of states representing a sufficient proportion of the world's gross tonnage had ratified the BWM Convention, triggering the entry into force one year later.

### **4. Details about the rules**

#### **The BWM Convention and Norwegian legislation**

The substantial rules of the BWM Convention are found in the Annex «Regulations for the control and management of ships' ballast water and sediments». The Annex is divided into five sections: Section A provides general rules, section B includes the requirements for the ballast water management plan, ballast water record book and ballast water management, section C provides rules regarding special requirements in certain areas, section D includes quality standards for ballast water management, and section E contains rules regarding survey and certification.

Chapter 5 of the Act of 16 February 2007 No. 9 on ship safety and security (Ship Safety and Security Act) provides rules on environmental safety, and pursuant to section 33 first paragraph the operation of a ship shall be so arranged and carried out that pollution of the external environment from the ship does not occur. The second paragraph provides the legal basis for the Ministry to issue regulations on, among other things, ballast water management. The Ministry of Climate and Environment has delegated the regulatory authority to the Norwegian Maritime Authority.

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<sup>1</sup> The International Maritime Organization

The IMO has drawn up a total of 14 guidelines and a number of circulars related to the implementation of the requirements of the BWM Convention. Some of these are specifically referred to in the Regulations.

## **Comments to new Regulations on ballast water management**

### Scope of application

The BWM Convention applies to ships engaged on international voyages that are constructed to operate with ballast water and includes, in principle, all ship categories. This is reflected in the scope of application, where the ship's trade area limitations, cf. Regulations of 4 November 1981 No. 3793 on trade areas (Trade Area Regulations), are decisive as to whether the ship falls within or outside the scope of the Regulations.

There is a clear distinction between ships certified for operation in Norwegian territorial waters only and ships certified for foreign voyages. The requirements of the BWM Convention will also have to apply to foreign vessels entering waters under Norwegian jurisdiction, and the scope of application of the Regulations has been structured with this in mind as well. Voyages in the waters near Svalbard and Jan Mayen will be regarded as foreign voyages, cf. sections 5 and 15 of the Trade Area Regulations.

Apart from ships certified for operation in Norwegian territorial waters, the Regulations will not apply to ships not constructed to carry ballast water, ships with permanent ballast water in sealed tanks and ships in government service. Regulation A-5 of the BWM Convention allows each state to decide to what extent the Convention shall apply to specified recreational craft and to rescue vessels. The Regulations continue a general exemption for these ship categories, cf. section 1 third paragraph of the Regulations.

The BWM Convention exempts ships that operate exclusively between the domestic coastline and the open seas. This will primarily be applicable to certain fishing vessels. Today, no trade area is arranged exclusively for such an operating pattern. Amending the Trade Area Regulations might become relevant down the line in order to address this, among other things. For now, the situation may be resolved by a specific limitation of the ship's trading certificate for those it may concern.

### Main rule – ballast water treatment technology

The Regulations on ballast water management on ships and mobile offshore units provide, as a main rule, that the ballast water shall be treated by treatment technology installed on board, cf. section 2.

For each individual ship, the phase-in of the requirement for treatment technology is based on the recent agreement during MEPC 71, cf. above, and based on renewal of the IOPP certificate. For ships not required to hold such a certificate, the deadline is 8 September 2024 due to the principle of equal treatment. In practice, this will be the latest phase-in deadline that ships holding an IOPP certificate may have.

The way the phase-in regime has been set up, the requirement for treatment technology might be applicable at different points of time for each individual ship. Until the requirement for treatment technology becomes applicable, the Regulations allow for the use of ballast water exchange as treatment method, cf. section 3. In this respect, the exchange areas which have

been established along the Norwegian coast in accordance with Regulation B-4.2 of the BWM Convention are continued in cases where the primary distance and depth criteria cannot be met, cf. Appendix 1 of the Regulations.

#### Exemptions and equivalents

Section 6 allows for the possibility that the ship in particular cases may omit to treat the ballast water in certain defined situations. This provision does not open for exemptions from the requirement to install treatment technology.

Furthermore, the BWM Convention includes some exemption provisions which are implemented in sections 10, 11 and 12. This applies to ships on a regular service between set ports and ships operating exclusively in the waters of another country. In order to be considered for exemption, ships of the first category will have to carry out a mapping of the conditions in the respective ports for the purpose of identifying the risk of spreading unwanted organisms. The mapping will form part of the supporting documentation necessary to determine the application and will thus, as a starting point, be paid for by the exemption applicant.

The BWM Convention allows for the use of other methods of ballast water treatment, provided that they give the same qualitative results as complying with the requirements outlined in the BWM Convention, cf. Regulation B-3.7 of the Convention. This opening is included in section 9 of the Regulations.

#### Documents

The requirements for a ballast water management plan and keeping a ballast water record book are continued, cf. sections 7 and 8 of the Regulations. The NMA has gathered the specific rules about keeping of ballast water record books in the new Regulations, similar to what has been done for, e.g. radio records.

#### Certification and survey

The BWM Convention's rules on survey largely follow the pattern of similar provisions on surveys related to other ship certificates. The majority of ship certificates and survey rules can be found in the Regulations on supervision and certificates for Norwegian ships and mobile offshore units (Certificate Regulations). For that reason, we have chosen to include the certification and survey provisions of the BWM Convention in the same place, structured similarly to the other provisions.

According to the BWM Convention, only ships of 400 gross tonnage and upwards are subject to mandatory survey and certification for ballast water management, cf. Regulation E-1.1. However, the BWM Convention requires the States to adopt appropriate measures to ensure that the provisions are complied with by the rest of the fleet as well, as far as they are applicable, cf. Regulation E-1.2. Therefore, a separate provision has been drawn up for the supervision of ships not required to carry a Ballast Water Management Certificate. Mobile offshore units are subject to certification and survey, equivalent to ships of 400 gross tonnage and upwards.

## **5. Comments to the individual provisions**

### **a. Regulations on ballast water management on ships and mobile offshore units**

#### **To section 1 Scope of application**

Similarly to a number of other conventions, the BWM Convention applies to ships engaged on international voyages. In line with this, there is a sharp distinction in Norwegian legislation founded on the Ship Safety and Security Act between ships certified for foreign voyages and ships that according to their certificates may only operate within Norwegian territorial waters or the Economic Zone of Norway. These conditions are reflected by the trade limitations. This means that ships carrying certificates that entitle them to operate outside the Economic Zone of Norway and/or to frequent another State's port will be subject to the requirements of the BWM Convention as stipulated in the Regulations. Since the trade areas for fishing vessels are not divided into domestic and foreign trade, like for passenger and cargo ships, it has been deemed necessary to specify the trade areas that will be covered by the requirements of the BWM Convention.

The Regulations also apply to foreign vessels operating in waters under Norwegian jurisdiction, which is also the solution chosen in the Regulations on environmental safety, cf. second paragraph.

Third paragraph (a) to (c) implement the exemptions set out in the BWM Convention. Ballast water in permanently sealed tanks may include a number of different solutions, but variants of permanently cast-in ballast may be more common in practice. The exemption in subparagraph d implements Regulation A-5 of the BWM Convention, which leaves it up to the individual maritime administration to determine to what extent the requirements of the Convention shall apply to this group of vessels. The exemption continues the scheme from the current Ballast Water Regulations. Since the ballast water exchange scheme is in the process of being phased out, the specific requirement applicable to this group of vessels has not been continued.

#### **To section 2 Treatment of ballast water**

The provision establishes the main rule – ballast water treatment by means of ballast water management systems. The BWM Convention does not contain requirements for dimensioning the treatment systems. However, an underdimensioned system could imply a limitation with regard to the loading and discharging speed. Such a limiting factor will hardly be desirable from a business management point of view. The definition of ballast water is derived from the BWM Convention.

The BWM Convention does not set out requirements for the actual installation of the ballast water treatment technology. In order to ensure a quality level, the second paragraph requires that the installation be carried out in accordance with M74, the common industry standard for the classification societies.

Regulation B-3 No. 6 of the BWM Convention allows for the use of treatment technology not physically installed on board, referred to as "reception facilities". The G5 has further guidelines on requirements for such facilities. The requirements for treatment of ballast water discharged into the sea shall be on the same level as the requirements for facilities installed on board. For now, the availability of such external treatment plants is an element of uncertainty.



The last paragraph concerning the testing of treatment systems is likely to be less important as time goes by, but technology is constantly evolving and new improved solutions to the ballast water management problems may be found. The last sentence implements the IMO's Guidelines for approval and oversight of prototype ballast water treatment technology programmes (G10).

### **To section 3 Exchange of untreated ballast water**

Exchange must be considered as an alternative way of complying with the requirements for treatment of ballast water during a transitional period until treatment technology is installed. The section lays down further rules on how the exchange shall take place. The third paragraph continues the scheme of exchange areas along the Norwegian coastline, which was established when the current Regulations were drawn up. Point 1.1 of Annex 1 of the current Regulations, Region for uptake of ballast water, has not been continued. As the BWM Convention now enters into force, compliance with the provisions will be of interest for several countries. In 2015, the North Sea countries, for their part, adopted their own exchange areas for the North Sea area outside the Economic Zone of Norway. These areas are described in BWM.2/Circ.56. These go into more detail and make Annex 1.1 of the current Regulations superfluous.

The third paragraph continues and implements the exemption from the requirements for distance from the coast for ships that might otherwise have to deviate from their planned course or which would otherwise be unnecessarily delayed. Due to the form of the Norwegian coast, this will rarely be relevant. In such cases, the ship will be instructed to use the established exchange areas along the coast. In this regard, the Regulations include a change of the previous requirement that exchange was to be carried out as far from the coast as possible.

The fourth paragraph suspends the obligation to carry out any exchange where this will threaten the safety or stability of the ship, its crew, or its passengers. This also includes the obligation to conduct exchange in the exchange areas, if that too would be hazardous.

### **To section 4 Management of sediments**

The ballast water management plan shall include procedures for sediment management and Regulation B-5 of the BWM Convention requires that ships remove and deliver sediments accordingly. Species may remain and survive in the sediments for a long time, even though the ballast water is being treated or exchanged. Ballast water management will have little effect if the sediments are not treated at the same time in a way that serves the purpose of preventing species from spreading. This implies that when sediments are removed from the ballast water tanks, they shall be delivered to reception facilities. The Regulations do not set requirements as to when this should be done, but regulates how sediments shall be treated.

### **To section 5 More stringent requirements in certain areas**

The provision implements Regulation C-1 of the BWM Convention and is a continuation and specification of section 3 last paragraph of the current Regulations, which allowed for stricter requirements "under special circumstances". The assessments that this provision presupposes will have to involve other specialist environments.

### **To section 6 Exemptions from requirements for ballast water treatment**

Section 6 lists different situations where the requirement for ballast water treatment expires temporarily. The provision does not constitute a legal basis for exemptions from requirements of installation of equipment.

**To section 7 Ballast water management plan**

The section contains basic requirements for the drawing up of a ballast water management plan. The last paragraph refers to MEPC.127(53), which represents Guideline 4 of the BWM Convention, and which contains more detailed guidelines regarding the drawing up of the plan. The section continues section 9 of the Ballast Water Regulations.

**To section 8 Ballast water record book**

The section implements Regulation B-2 of the BWM Convention. For Norwegian ships, the requirements for keeping a ballast water record book are regulated by the Regulations of 15 September 1992 No. 693 on the form and keeping of log books for ships and mobile offshore units, which also include general requirements for the keeping of log books for ships and mobile offshore units. The provision continues the systematics of the current Ballast Water Regulations.

**To section 9 Alternative solutions**

The section implements Regulation B-3 No. 7 of the BWM Convention.

**To section 10 Exemption for ships on a regular service**

The section implements Regulation A-4 of the BWM Convention. Through the cooperation between OSPAR and HELCOM, a procedure for handling applications for exemption has been developed based on Regulation A-4 of the BWM Convention. The procedure requires an extensive mapping of the ports on the relevant route.

**To section 11 Exemptions for foreign ships and mobile offshore units in Norwegian waters**

Sections 11 and 12 implement Article 3.2 (c) of the BWM Convention, which exempts ships operating exclusively under the jurisdiction of another party, subject to the authorisation of the latter party for such exclusion. The scheme must be seen as a consequence of the fact that the purpose of the Convention is to prevent the transfer of organisms between different coastal waters. Ships operating within the same coastal waters will normally not contribute to such transfer, irrespective of their flag.

**To section 12 Exemptions for Norwegian ships and mobile offshore units in the waters of another State**

See comment to section 11.

**To section 13 Phase-in of requirements for ballast water treatment technology**

The original rules of the BWM Convention concerning the phase-in of the ballast water treatment technology are to be found in Regulation B-3 Nos. 1 to 5 of the Convention, but the dates have passed. During MEPC 71, the IMO launched a new phase-in regime based on renewal of the IOPP certificate. This regime has been included in the Regulations.

**To section 14 Entry into force**

No comments.

**To annexes**

The annexes are continued unchanged from the outgoing regulations other than Annex 1.1 Region for uptake of ballast water, which is omitted.

- 1. Regulation concerning amendments to Regulations on supervision and certificates for Norwegian ships and mobile offshore units, the Log Book Regulations, the Port State Control Regulations, etc.**



### **To amendments to the Log Book Regulations**

All specific requirements related to record keeping of ballast water operations can be found in the new Regulations on ballast water management. There are no changes as to which matters to log in the ballast water record book or how to carry out the logging. The general rules of the Log Book Regulations will still apply to Norwegian ships.

### **To amendments to the Notification Regulations**

Regulation E-1 No. 7 of the BWM Convention requires that the owner, operator or other person in charge of the ship report at the earliest opportunity to the supervising authority or the one responsible for issuing the ship's certificate if an accident occurs to a ship which substantially affects the ability of the ship to conduct ballast water management. It is natural to integrate such a notification obligation into the obligations to notify and report stipulated in section 6 of the Regulations of 27 June 2008 No. 744 on the obligation to notify and report marine accidents and other incidents at sea. Further content and form follow the systematics of chapter 4 of the Regulations, and such an incident will not be considered a marine accident. The obligation to report errors regarding ballast water management is added to section 6 second paragraph.

### **To amendments to the Port State Control Regulations**

Section 2 of the Regulations of 24 November 2014 No. 488 on port State control lists the conventions that form the basis for the port State control. In order to provide legal basis for control and measures, the BWM Convention must be added to the list.

### **To amendments to the Certificate Regulations**

The BWM Convention requires survey and certification for ships of 400 gross tonnage and upwards and leaves it up to the administration to establish arrangements to ensure compliance with the requirements with regard to small vessels. Certification and survey are integrated into the current survey regime by new sections 34a, 34b and 34c. For the smaller vessels, requirements for survey are introduced, but not for certification.

In order to implement the BWM Convention's requirements regarding certificate extension, cf. section 37 of the Certificate Regulations, fishing vessels are added in the first, second and fifth paragraphs. For other ship categories, the current provisions on this matter are in line with the requirements of the BWM Convention.

## **6. Administrative and financial implications**

### **Consequences for the industry**

Implementing and enforcing rules on ballast water management has already been established as Norwegian policy. The phase-in of the BWM Convention was initiated as early as 2006, when Norway acceded to the Convention, and continued with the Ballast Water Regulations in 2009. The entry into force on 8 September 2017 thus marks a notified breakthrough in the Norwegian fleet. The requirements will nevertheless involve fairly substantial costs, but with a varying relative burden on each party and each segment.

On assignment from the NMA, the consulting company Menon Business Economics has carried out a comprehensive investigation of the nutritional consequences of the introduction of the requirements of the BWM Convention (MENON 2014). The report is available via this link (in

Ships that have not installed a ballast water management system already, will have to do so by the end of the transition period. The costs for each ship depend, among other things, on the size and design of the ship, and of the choice of system. The companies will have to consider these costs against the ship's value and life. Together with the opportunity to bring forward the renewal of the IOPP certificate, the rules imply the possibility of a phase-in period of up to 7 years after the entry into force of the BWM Convention. This allows for longer-term planning of investments in ballast water treatment technology. MENON 2014 presupposes that approx. 1250 ships will have to install a ballast water management system as a result of the BWM Convention and estimates the total financial costs of implementing the BWM Convention to NOK 5 billion for Norwegian shipping companies. Several ships already have such technology installed, so it is assumed that the number of ships is not noticeably higher now. However, the implementation will make it more attractive to scrap older tonnage at an earlier stage.

In line with the companies' needs, there will likely be a marked increase in installation assignments for the shipyard industry and increased revenue for manufacturers of ballast water treatment systems and for consultants with skills in the field of ship outfitting and development of a ballast water management plan.

As the rules will be applicable to all industry players engaged on international voyages, we assume that any effects causing distortion of competition will be small within the industry. Compared to other parts of the transport industry, however, it will be possible to demonstrate such effects, as higher costs lead to reduced competitive ability. Nonetheless, it is assumed that such effects will be less critical over time, as they are mainly one-off investments which will be limited in comparison to other capital and operating costs.

### **Consequences for the authorities**

The implementation of the BWM Convention will lead to an increased amount of tasks for the authorities, including approval of ballast water management plans, inspections, certificate issuance and processing of applications for exemption. For the NMA's part, the introduction of the BWM Convention will also entail control and sampling in connection with port State controls. In this connection, expenses will be incurred related to training measures, purchase of analysers and sampling equipment, agreement with a laboratory for extended analysis and consultancy service in connection with applications for exemption.

The positive consequences of the requirements of the BWM Convention are well-founded, and the expenses connected with the introduction of the legislation are regarded as necessary costs to achieve the required environmental effect.

*This document has been electronically approved, and therefore does not contain handwritten signatures.*

Attachment:

- Regulations of 8 September 2017 on ballast water management on ships and mobile offshore units, **as amended**
- Regulation of 8 September concerning amendments to Regulations on supervision and certificates for Norwegian ships and mobile offshore units, the Log Book Regulations, the Regulations on port State control, etc.