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MERCHANT SHIPPING ACT, 2007
MERCHANT SHIPPING (BALLAST WATER MANAGEMENT)
REGULATIONS, 2012



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SCHEDULES

S. II. 244 of 2012

MERCHANT SHIPPING ACT, 2007
MERCHANT SHIPPING (BALLAST WATER MANAGEMENT)
REGULATIONS, 2012

[1st day of June, 2012]

Commence-
ment.

In exercise of the powers conferred on me by section 335 (1) and (3) and section 434 of the Merchant Shipping Act, 2007 and all other powers enabling me in that behalf, I, SENATOR IDRIS UMAR, Honourable Minister of Transport, hereby make the following Regulations:

PART I— PRELIMINARY

1.—(1) Subject to sub-regulations (2) and (5) and to any specific provisions of these Regulations, the provisions of these Regulations shall apply to— Application.

(a) vessels entitled to fly the flag of Nigeria;

(b) vessels not entitled to fly the flag of Nigeria but which operate under the authority of Nigeria ; and

(c) other vessels when in ports and at offshore terminals in Nigeria.

(2) Subject to sub-regulation (3) of this regulation, the provisions of this Part shall not apply to permanent ballast water in sealed tanks on vessels, or to—

(a) vessels not designed or constructed to carry Ballast Water ;

(b) any military vessel, naval auxiliary or other vessel owned or operated by a State and used, for the time being, only on government non-commercial service—

unless the Agency determines, in accordance with sub-regulation (3) of this regulation that the discharge of ballast water from such a vessel would impair, endanger or damage the environment, human health, property or resources, including such effects on other States ;

(3) Where the Agency determines that the discharge of ballast water from a vessel to which sub-regulation (2) of this regulation applies may impair, endanger or damage the environment, human health, property or resources of Nigeria or of adjacent or other States, the Agency may serve written notice on the owner or master of the vessel, requiring that the provisions of the Ballast Water Management Convention be complied with in relation to the ballast water held in the vessel.

(4) A notice served under sub-regulation (3) may—

(a) apply to a single voyage or for a specific period of time; and;

(b) specify any particular measures that the owner or master must undertake to achieve compliance with the Ballast Water Management Convention.

(5) The Agency may authorise a vessel which only operates in Nigerian waters, to operate without compliance with the provisions of these Regulations or the Ballast Water Management Convention, but the Agency shall not grant such authorisation if doing so would impair, endanger or damage the environment, human health, property or resources of Nigeria or those of adjacent or other States.

PART II—SURVEYS AND CERTIFICATION

Surveys.

2. Nigerian vessels of 400 gross tonnage and above to which these Regulations apply, excluding floating platforms, FSUs and FPSOs, shall be subject to the following surveys :

(a) an initial survey before the ship is put in service or before the Certificate required under regulation 3 of these Regulations, is issued for the first time to verify that the Ballast Water Management plan required by regulation 9 of these Regulations and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of these Regulations;

(b) a renewal survey at intervals specified by the Agency, but not exceeding five years, except where regulation 6(2), (5), (7) or (8) of these Regulations is applicable and the survey shall verify that the Ballast Water Management plan required by these Regulations and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the applicable requirements of the Convention ;

(c) an intermediate survey within three months before or after the second anniversary date or within three months before or after the third anniversary date of the Certificate, which shall take the place of one of the annual surveys specified below ensuring that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of these Regulations and are in good working order and the intermediate surveys undertaken shall be endorsed on the Certificate issued under regulation 3 or 4 of these Regulations ;

(d) an annual survey within three months before or after each Anniversary date, including a general inspection of the structure, any equipment, systems, fittings, arrangements and material or processes associated with the Ballast Water Management plan to ensure that they remain satisfactory for the service for which the ship is intended, and the annual surveys shall be endorsed on the Certificate issued under regulation 5 of these Regulations ;

(e) an additional survey either general or partial, according to the circumstances, shall be made after a change, replacement, or significant repair of the structure, equipment, systems, fittings, arrangements and material necessary to achieve full compliance with these Regulations and the survey shall be such as to ensure that any such change, replacement, or significant repair has been effectively made, so that the ship complies with the requirements of these Regulations and the surveys shall be endorsed on the Certificate issued under regulation 5 of these Regulations.

3.—(1) The Agency shall ensure that a ship to which regulation 2 of these Regulations applies is issued a Certificate after successful completion of a survey conducted in accordance with that regulation.

Issue or endorsement of a Certificate.

(2) The Certificate referred to in sub-regulation (1) of this regulation shall be issued or endorsed either by the Agency or by any organization duly authorized and the Agency shall assume full responsibility for the Certificate issued or endorsed.

4.—(1) At the request of the Agency, another Party may cause a ship to be surveyed and, if satisfied that the provisions of the Convention are complied with, shall issue or authorize the issuance of a Certificate to the ship, and where appropriate, endorse or authorize the endorsement of that Certificate on the ship, in accordance with these Regulations.

Issue or endorsement of a Certificate by another party.

(2) A Certificate issued in accordance with provision of sub-regulation (1) of this regulation shall contain a statement to the effect that it has been issued at the request of the Agency and it shall have the same force and receive the same recognition as a Certificate issued by the Agency.

5. The Certificate shall be written in the English language and conform to the model prescribed in Schedule to these Regulations.

Form of the Certificate.

6.—(1) A Certificate shall remain valid for a period which shall not exceed five years.

Duration and validity of Certificate

(2) Notwithstanding the provisions of sub-regulation (1) of this regulation, the validity of a renewal survey shall be determined as follows—

(a) where the renewal survey is completed within three months before the expiry date of the existing Certificate, the new Certificate shall be 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 ;

(b) where the renewal survey is completed after the expiry date of the existing Certificate, the new Certificate shall be 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 ; and

(c) where the renewal survey is completed more than three months before the expiry date of the existing Certificate, the new Certificate shall be valid from the date of completion of the renewal survey to a date not exceeding five years from the date of completion of the renewal survey.

(3) Where a Certificate is issued for a period of less than five years, the Agency may extend the validity of the Certificate beyond the expiry date to the maximum period specified in sub-regulation (1) of this regulation provided that the surveys referred to in sub-regulation (2) of this regulation, applicable when a Certificate is issued for a period of five years are carried out as appropriate.

(4) Where a renewal survey has been completed and a new Certificate cannot be issued or placed on board the ship before the expiry date of the

existing Certificate, the person or organization authorized by the Agency may endorse the existing Certificate and such a Certificate shall be accepted as valid for a further period which shall not exceed five months from the expiry date.

(5) Where a ship at the time when the Certificate expires, is not in a port in which it is to be surveyed, the Agency may extend the period of validity of the Certificate and this extension shall be granted only—

(a) for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed ;

(b) in cases where it appears proper and reasonable to do so ; and

(c) for a period not longer than three months

(6) A ship to which the extension referred to in sub-regulation (5) of this regulation is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new certificate, and when the renewal survey is completed, the new certificate shall be valid to a date not exceeding five years from the date of expiry of the existing certificate before the extension was granted.

(7) A Certificate shall not be extended for a period longer than three months, and a ship to which such extension is granted shall not, on its arrival in the port in which it is to be surveyed, be entitled by virtue of such extension to leave that port without having a new Certificate.

(8) When the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

(9) A Certificate issued to a ship engaged on short voyages which has not been extended under the provisions of this regulation, may be extended by the Agency for a period not exceeding one month from the date of expiry stated on it and when the renewal survey is completed, the new Certificate shall be valid to a date not exceeding five years from the date of expiry of the existing Certificate before the extension was granted.

(10) If an annual survey is completed before the period specified in regulation 2 of these Regulations—

(a) the anniversary date shown on the Certificate shall be amended by endorsement, to a date not exceeding three months after the date on which the survey was completed ;

(b) the subsequent annual or intermediate survey required by regulation 2 of these Regulations shall be completed at the intervals prescribed by that regulation using the new anniversary date ; and

(c) the expiry date may remain unchanged provided that one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by regulation 2 of these Regulations are not exceeded.

(11) A Certificate issued under regulations 3 or 4 of these Regulations shall cease to be valid in any of the following cases :

(a) where 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 the provision of regulation 10 of these Regulations ;

(b) upon transfer of the ship to the flag of another State ;

(c) where the relevant surveys are not completed within the periods specified under regulation 2 ; or

(d) where the Certificate is not endorsed in accordance with Regulation 2 of these regulations.

7.—(1) Surveys of vessels for the purposes of applying and enforcing the provisions of these Regulations may be carried out by—

Person or Organisation to undertake surveys.

(a) surveyors employed by the Agency ;;

(b) other appropriately qualified persons appointed by the Agency to be surveyors for the purposes of these Regulations ; and

(c) recognised classification societies and other appropriate Organisations recognised and appointed by the Agency for the purpose of undertaking surveys in accordance with the Guidelines and Specifications adopted by the Organisation.

(2) The Agency may authorise and empower surveyors or recognised societies and Organisations to—

(a) require a vessel that they survey to comply with the provisions of these Regulations; and

(b) carry out surveys and inspections at the request of the appropriate authorities of a Port State that is a Party.

(3) The Agency shall notify the Organisation of the specific responsibilities and conditions of the authority delegated to the surveyors of recognised societies and Organisations under this regulation.

8.—(1) Upon the transfer of a Nigerian vessel to the flag of another Party, the Agency shall transmit as soon as possible to the Government of the State concerned, a copy of the Certificate carried by the vessel before the transfer and, if available, a copy of the vessel's most recent survey report, where the State makes such a request within 3 months after the transfer has taken place.

Transfer of flag.

(2) Where a vessel is transferred to the Nigerian registry, a new Certificate shall only be issued when the Agency is fully satisfied that the vessel is in full compliance with the requirements of these Regulations and the Ballast Water Management Convention.

PART III—BALLAST WATER AND SEDIMENT MANAGEMENT

9.—(1) The owner, master or agent of any vessel to which these Regulations apply, shall—

Obligations of owners and masters.

(a) ensure that a Ballast Water Management Plan has been prepared for the vessel and is kept on board and implemented at all times, in accordance with sub-regulation (2) of this regulation ;

(b) ensure that officers and crew are familiar with their duties in relation to the implementation of Ballast Water Management relevant to the vessel on which they serve, and are familiar with the vessel's Ballast Water Management Plan, as it applies to their specific duties ;

(c) ensure that the condition of the vessel and its equipment, systems and processes are maintained in compliance with these Regulations and the provisions of the Ballast Water Management Convention, to ensure that the vessel remains fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources ;

(d) after any survey of a vessel under these Regulations has been completed, ensure that no change is made in the structure, equipment, fittings, arrangements or material associated with the vessel's Ballast Water Management, without the prior approval of the Agency, except where the replacement of such equipment or fittings with identical items is undertaken ;

(e) provide a full report at the earliest opportunity to the Agency of any accident which occurs to a vessel or when a defect is discovered which affects or impacts upon the ability of the vessel to conduct Ballast Water Management in accordance with its Plan, and the Convention or these Regulations;

(f) provide a report to the Agency as soon as possible after any ballast water is discharged from the vessel into the country's territorial waters that does not comply with any requirement of these Regulations or the Convention, and provide such further information in relation to the discharge as may be required by the Agency ;

(g) cause investigations to be initiated to determine whether a survey is necessary after an accident has occurred or such a defect is discovered, and provide a report to the Agency in relation to such matters.

(h) ensure that a Ballast Water Records Book in the form set out in the Second Schedule to these Regulations—

(i) is maintained and kept on board of the vessel at all times ;

(ii) records all entries for a minimum period of two years prior to the current date, including entries in respect of exempted uptake or discharge of ballast water ;

(iii) is kept in the Owner's control for a minimum period of three years after the record book is full ; and

(iv) is kept readily available for inspection at all reasonable times, and in the case of an unmanned vessel under tow, may be kept on the towing vessel;

(2) A Ballast Water Management Plan shall—

(a) detail safety procedures for the vessel, and its crew who have responsibilities for the management of ballast water ;

(b) provide a detailed description of the actions to be taken to implement Ballast Water Management and supplemental practices in accordance with the Convention;

(c) detail procedures for the disposal of sediments at sea and on shore which comply with the requirements of these Regulations and the Convention ;

(d) designate officers and crew with responsibilities for implementing the Plan and observing the requirements of the Convention ;

(e) specify appropriate reporting responsibilities and procedures ; and

(f) be written in the English language, or where written in a language other than English, be translated into the English language.

10.—(1) A ship constructed before 2009 with a Ballast Water Capacity of between 1500 and 5000 cubic metres, inclusive, shall—

Ballast
Water
Manage-
ment.

(a) until 2014, perform Ballast Water exchange with an efficiency of at least 95 percent volumetric exchange of Ballast Water, provided that for ships exchanging Ballast Water by the pumping-through method, pumping through three times the volume of each Ballast Water tank shall be considered to meet the standard described in this sub-regulation and pumping through less than three times the volume may be accepted where the ship can demonstrate that at least 95 percent volumetric exchange is met; and

(b) after 2014 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 discharge of the indicator microbes shall not exceed the following specified concentrations—

indicator microbes, as a human health standard, shall include :

(i) Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 milliliters or less than 1 cfu per 1 gram (wet weight) zooplankton samples;

(ii) *Escherichia coli* less than 250 cfu per 100 milliliters ; and

(iii) *Intestinal Enterococci* less than 100 cfu per 100 milliliters.

(2) A ship constructed before 2009 with a Ballast Water Capacity of less than 1500 or greater than 5000 cubic metres shall—

(a) until 2016, perform Ballast Water exchange with an efficiency of not less than 95 percent volumetric exchange of Ballast Water and for ships exchanging Ballast Water by the pumping-through method, pumping through

three times the volume of each Ballast Water tank shall be considered to meet the standard described in sub-regulation 1 of this regulation and pumping through less than three times the volume may be accepted provided the ship can demonstrate that at least 95 percent volumetric exchange is met; and

(b) after 2016 discharge less than 100 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 discharge of the indicator microbes shall not exceed the following specified concentrations—

indicator microbes, as a human health standard, shall include :

(i) Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 milliliters or less than 1 cfu per 1 gram (wet weight) zooplankton samples ;

(ii) *Escherichia coli* less than 250 cfu per 100 milliliters ; and

(iii) *Intestinal Enterococci* less than 100 cfu per 100 milliliters.

(3) A ship to which sub-regulation (2)(b)(i)-(iii) of this regulation applies shall comply with the provisions of sub-regulation (1) or this regulation not later than the first intermediate or renewal survey, whichever occurs first, after the anniversary date of delivery of the ship in the year of compliance with the standard applicable to the ship.

(4) A ship constructed in or after 2009 with a Ballast Water Capacity of less than 5000 cubic metres shall conduct Ballast Water Management that meets at least the standard described in sub-regulation (1)(B) of this regulation.

(5) A ship constructed in or after 2009, but before 2012, with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management in accordance with sub-regulation (2) of this regulation.

(6) A ship constructed in or after 2012 with a Ballast Water Capacity of 5000 cubic metres or more shall conduct Ballast Water Management that at least meets the standard described in sub-regulation (1)(b) of this regulation.

(7) The requirements of this regulation shall not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the International Maritime Organization for such facilities.

Ballast Water Exchange.

111.—(1) A ship conducting Ballast Water exchange to meet the standard in regulation 9(1)(a) of these Regulations shall:

(a) whenever possible, conduct such Ballast Water exchange 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 ;

(b) in cases where the ship is unable to conduct Ballast Water exchange in accordance with sub-regulation (1)(a) of this regulation, such Ballast Water

exchange shall be conducted taking into account the Guidelines described in sub-regulation (1)(a) of this regulation and 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 ;

(2) In sea areas where the distance from the nearest land or the depth does not meet the parameters described in sub-regulation (1)(a) or (1)(b) of this regulation, the Agency may designate areas, in consultation with adjacent or other States, as appropriate, where a ship may conduct Ballast Water exchange, taking into account the Guidelines described in sub-regulation (1)(a) of this regulation.

(3) A ship shall not be required to deviate from its intended voyage, or delay the voyage, in order to comply with any particular requirement of sub-regulation (1) of this regulation.

(4) A ship conducting Ballast Water exchange shall not be required to comply with sub-regulations (1) or (2) of this regulation, as appropriate, if the master reasonably decides 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 conditions.

(5) Where a ship is required to conduct Ballast Water exchange and does not do so in accordance with this regulation, the reasons shall be entered in the Ballast Water Records Book.

12.—(1) Ships shall remove and dispose of sediments from spaces designated to carry Ballast Water in accordance with the provisions of the ship's Ballast Water Management plan.

Sediment
Management
for ships.

(2) Ships described in regulations 9 to 11 of these Regulations shall, without compromising safety or operational efficiency, be designed and constructed with a view to minimize the uptake and undesirable entrapment of sediments, facilitate removal of sediments, and provide safe access to allow for sediment removal and sampling, taking into account guidelines developed by the Organisation.

(3) Ships described in regulation 9 of these Regulations shall, to the extent practicable, comply with the requirements of sub-regulation (2) of this regulation.

13.—(1) The requirements of regulations 9 and 10 of these Regulations shall not apply to—

Exceptions.

(a) the uptake or discharge of Ballast Water and Sediments necessary for the purpose of ensuring the safety of a ship in emergency situations or saving life at sea;

(b) the uptake and discharge of Ballast Water and Sediments when being used for the purpose of avoiding or minimizing pollution incidents from the ship ;

(c) the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments ;

(d) 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, provided that no mixing with unmanaged Ballast Water and Sediments from other areas has occurred and where mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with these Regulations ; or

(e) the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:

(i) provided that 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 minimizing the discharge ; and

(ii) unless the owner, Company or officer in charge willfully or recklessly caused the damage.

(2) The requirements of regulation 6(2)(a) of these Regulations and sub-regulation (1)(a) of this regulation shall not apply in the circumstances set out in paragraph A-3 of Schedule 2 to the Convention, and subject to sub-regulations (3) and (4) of this regulation the Agency may grant exemptions for Nigerian waters, in relation to any of those requirements in the circumstances set out in paragraph A-4 of Schedule 2 to the Convention.

(3) Exemptions granted pursuant to sub-regulation (2) of this regulation shall not be effective until after communication to the Organisation and circulation of relevant information to the parties has been effected.

(4) The Agency shall not grant an exemption under this regulation which may impair, endanger or damage the environment, human health, property or resources, or those of adjacent or other States.

(5) Any exemptions granted under this regulation must be recorded in the Ballast Water Records Book of the relevant vessel.

Grant of
other
exemptions
by Agency.

14. —(1) The Agency may grant exemptions to any requirements under this Part of these Regulations, in addition to those exemptions contained elsewhere in the Convention, but only when they are :

(a) granted to a ship or ships on a voyage or voyages between specified ports or locations ; or to a ship which operates exclusively between specified ports or locations ;

(b) effective for a period of not more than five years subject to intermediate review ;

(c) granted to ships that do not mix Ballast Water or Sediments other than between the ports or locations specified in sub-regulation (1) of this regulation ; and

(d) granted based on the Guidelines on Risk Assessment developed by the Organisation.

(2) Exemptions granted pursuant to sub-regulation (1) of this regulation shall not be effective until after communication to the Organisation and circulation of relevant information to the parties.

(3) Any exemptions granted under this regulation shall not impair or damage the environment, human health, property or resources of adjacent or other States and any State that the Agency determines may be adversely affected shall be consulted, with a view to resolving any identified concerns.

(4) Any exemptions granted under this regulation shall be recorded in the Ballast Water Records Book.

15.—(1) Where it is determined by an authorised officer that a vessel's ballast water management does not conform to the requirements of these Regulations or the Convention, or the conditions of the Certificate, or is such that the vessel is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources, the Agency shall determine the corrective action that must be taken to bring the vessel into compliance, and—

Other
powers of
the Agency.

(a) may cancel and withdraw the Certificate if it is current, and require the cancelled Certificate to be surrendered to the Agency ;

(b) may refuse to issue a Certificate if no current Certificate is in effect;

(c) shall ensure that the appropriate authorities of that State are notified, if the vessel is in the port of another party ;

(d) may detain the vessel; and

(e) may take all necessary action and exercise all appropriate powers under the maritime laws to ensure that the defects or breaches are remedied.

(2) The Agency may by Marine Notice specify measures which it considers necessary to prevent, reduce or eliminate the transfer of harmful aquatic organisms and pathogens through ballast water and sediments, and such measures shall take account of Guidelines developed by the International Maritime Organisation and issued by the Agency from time to time.

(3) A Marine Notice given under sub-regulation (2) of this regulation shall—

(a) specify the additional measures ;

(b) list all appropriate services, including notification to mariners of areas, available and alternative routes or ports, as far as practicable ; and

(c) recite any approvals given by the Organisation.

(4) It shall be the duty of every owner and master of a vessel to comply with the additional measures notified under this regulation.

(5) The Agency may, by Marine Notice, vary or waive any measures imposed under this regulation for a period of time or in any specified circumstances.

(6) The Agency may issue a Marine Notice to notify mariners of areas in Nigerian waters where vessels should not uptake ballast water due to known conditions including—

- (a) 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) the location of sewage outfalls; or
- (c) tidal flushing which is poor, or if the tidal stream is known to be more turbid—

(7) A Marine Notice may include the precise coordinates of the area or areas, and the location of any alternative area or areas for the uptake of ballast water.

(8) The Agency shall notify the Organisation and all potentially affected coastal States of any areas identified under sub-regulation (6) of this regulation, and the time period such warning is likely to be in effect, and all such notifications shall include—

- (a) the precise co-ordinates of the area or areas ;
- (b) the location of any alternative area or areas for the uptake of ballast water, if any ; and
- (c) advice to vessels needing to uptake ballast water in the area, describing arrangements made for alternative supplies.

(9) The Agency shall also notify mariners, the Organisation and any potentially affected coastal States when a warning given under sub-regulation (6) of this regulation is no longer applicable.

Sediment
reception
facilities

16.—(1) The Agency shall ensure that, in ports, terminals or jetties designated for cleaning or repair of ballast tanks, adequate facilities are provided for the reception of Sediments, which must be designed, constructed, managed and operated so as to effectively contain the sediments taken from vessels, and protect the environment and human health, and such facilities must—

- (a) comply with the requirements of these Regulations, the Convention and any requirements prescribed from time to time by the Agency ; and
- (b) be open to inspection by officers of the Agency at any time ; and
- (c) be designated for the purposes of Article 5 of the Convention.

(2) The Agency may—

- (a) prescribe standards applying to any Sediment reception facility ;

(b) determine and apply requirements for the operation of such reception facilities without causing undue delay to vessels, and to provide for the safe storage, treatment and disposal of sediments so as not to impair or damage the environment, human health, property or resources, or those of other States ; and

(c) issue any directions necessary for implementing the requirements of the Convention relating to reception facilities for sediments.

17.—(1) The Agency shall—

(a) endeavour to promote and facilitate scientific and technical research on Ballast Water Management; and

(b) monitor the effects of Ballast Water Management in Nigerian waters.

(2) Efforts under sub-regulation (1) of this regulation shall include observation, measurement, sampling, evaluation and analysis of the effectiveness and adverse impacts of any technology or methodology as well as any adverse impacts caused by such organisms and pathogens that have been identified to have been transferred through ships' Ballast Water.

(3) Upon request by a State Party, the Agency may share relevant information on scientific and technology programmes and technical measures undertaken with respect to Ballast Water Management and the effectiveness of Ballast Water Management deduced from any monitoring and assessment programmes.

18. The Agency may, where appropriate, make the following information available to the Organization and other parties :

(a) any requirements and procedures relating to Ballast Water Management in Nigeria;

(b) the availability and location of any reception facilities for the environmentally safe disposal of Ballast Water and Sediments ; and

(c) any requirements for information from a ship which is unable to comply with the provisions of these Regulations for reasons specified in regulations 15 and 16 of these Regulations.

PART IV—INSPECTIONS AND ENFORCEMENT

19.—(1) All vessels to which these Regulations apply are subject to inspection by authorised officers for the purpose of determining whether the vessel is in compliance with these Regulations and the Convention, and any such inspection may be conducted to—

(a) verify that the vessel has a valid Certificate, and that it is kept on board ;

(b) confirm that ballast water records book is being carried and properly kept and maintained for the vessel; and

(c) take samples of the vessel's ballast water for testing, but the time required to analyse the samples shall not be used as a basis for unduly delaying the operation, movement or departure of the vessel.

(2) Where a vessel does not carry a valid Certificate, or if there are grounds upon which an authorised officer believes that—

(a) the condition of the vessel or its equipment is not in compliance with the Certificate ; or

Scientific and technical research and monitoring.

Communication of information.

Inspection by authorised officers.

(b) the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures—

the owner and master must permit a detailed inspection of the vessel to be carried out by the Agency, or cause such an inspection to be carried out in any manner required by the Agency.

(3) ~~An authorised officer undertaking an inspection under sub-regulation (2) of this regulation may give directions to the owner or master of the vessel and take such steps as are necessary to ensure that the vessel does not discharge ballast water until it can do so without presenting a threat of harm to the environment, human health, property or resources.~~

Enforcement
by Agency
and its
officers

20.—(1) Where a vessel is found to have contravened these Regulations, then in addition to any other powers under these Regulations or any other law, the Agency may—

(a) issue a warning to the owner or master ;

(b) detain the vessel until it is made to comply with the requirements of these Regulations and the Convention, or rendered safe as required by these Regulations;

(c) order that the vessel be excluded from Nigerian waters, and from ports and off-shore facilities in Nigerian waters ; or

(d) grant permission to leave the port or offshore terminal for the purpose of discharging ballast water or proceeding to the nearest appropriate repair yard or reception facility, if the movement of the vessel does not present a threat of harm to the environment, human health, property or resources.

(2) Where a sample of ballast water taken from a vessel indicates that the vessel poses a threat to the environment, human health, property or resources, the Agency may issue a notice to the vessel to prohibit any discharge of ballast water until the threat is removed.

(3) An authorised officer may also inspect a vessel when it enters port or an offshore terminal, if a request for an investigation is received from any State Party to the Convention, and the report of such investigation shall be sent to the State requesting it and to the competent authority of the maritime administration of the vessel concerned so that appropriate action may be taken.

(4) In the event that any action is taken in relation to a vessel under the authority of this regulation, the officer taking the action shall give written notice to the management of the vessel concerned, or if this is not possible, to the consul or diplomatic representative of the vessel concerned, of the action taken against it.

(5) The Agency shall also notify the vessel's next port of call of all relevant information about the violation.

(6) Where the Agency exercises a power of detention arising from an alleged contravention of these Regulations, it shall authorise the release of the vessel if—

(a) no proceedings for the offence in question are instituted within seven working days including the day the vessel is detained ;

(b) the master or owner is not convicted in any such proceedings ;

(c) the sum of N10,000,000.00 is lodged with the Agency by way of security ;

(d) where the master or owner is convicted of the offence, all fines, costs and expenses are paid in full in accordance with the court's order ; or

(e) the release is ordered by a court of competent jurisdiction, in this case, the Federal High Court.

(7) The Agency shall repay any sum paid in pursuance of sub-regulation (6)(c) of this regulation or release any security so given—

(a) if no proceedings for the offence in question are instituted within seven days beginning with the day on which the sum is paid ; or

(b) if such proceedings, having been instituted within that period, are concluded without the master or owner being convicted.

(8) Where security has been given, by any person in accordance with sub-regulation (6)(c) of this regulation and the master or owner is convicted of the offence in question, the sum so paid or the amount made available under the security shall be applied as follows—

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

(b) next in payment of any fine imposed by the Court; and

(c) and any balance shall be repaid to the person giving the security.

21.—(1) The owner and master of a vessel to which these Regulations apply each have a duty to ensure that the vessel complies with the provisions of these Regulations, and are jointly and severally liable in relation to any breach.

Offences
against these
Regulations.

(2) Any person who breaches any requirement under these Regulations, or who fails to comply with any notice, order or direction given by the Agency under the authority of these Regulations, commits an offence and shall be liable on conviction to a fine of not less than Ten Million Naira or to imprisonment for a term of not more than two years or both.

(3) It shall be a defence for a person charged with a breach under sub-regulation (1) or (2) of this regulation to show that all reasonable precautions were taken and that he exercised all due diligence to avoid the commission of the offence.

(4) Where a fine, or an order for the payment of costs or expenses, imposed by a Court in proceedings for an offence under these Regulations is not paid, the Court may, in addition to any other powers for enforcing payment, order the amount remaining unpaid to be levied by distress or arrest and sale of the vessel, or its tackle, furniture and apparel.

(5) In addition to imposing a fine upon conviction of a person under these Regulations, the court may order the person to pay compensation arising from any pollution caused by the commission of the offence, including the costs of responding to or mitigating any such pollution.

Offences by
vessels
outside the
jurisdiction.

22. In accordance with the requirement of the Convention, the Agency shall cooperate with a maritime administration of another Party in relation to proceedings against a vessel for a breach of the Convention in the jurisdiction of that Party.

Interpreta-
tion.

23.—(1) In these Regulations, unless the context otherwise requires—

"Director General" means the Director General of the Nigerian Maritime Administration and Safety Agency ;

"the Act" means the Merchant Shipping Act 2007 ;

"the Agency" means the Nigerian Maritime Administration and Safety Agency ;

"Annex" means the Annex to the Ballast Water Management Convention ;

"Authorised officer" means the Director General and includes—

(a) every surveyor and other persons empowered to undertake surveys and inspections of vessels in accordance with these Regulations ;

(b) boarding officers employed by the Agency ;

(c) other officers of the Agency appointed by the Director to enforce these Regulations; and

(d) other persons to whom the Director has delegated powers to enforce the provisions of these Regulations ;

"Ballast Water" includes water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship, and has the meaning given to it in MARPOL 73/78 and the Ballast Water Management Convention;

"Ballast Water Management" means mechanical, physical, chemical and biological processes (either singularly or in combination) to remove, render harmless or to avoid the uptake or discharge of harmful aquatic organisms and pathogens within a vessel's ballast water and sediments ;

"International Ballast Water Management Certificate" and *"Certificate"* means the International Ballast Water Management Certificate specified in the Convention, and which shall be issued by the Agency in an approved form consistent with that prescribed by the Convention ;

"Ballast Water Management Convention" and *"Convention"* means the International Convention for the Control and Management of Ships' Ballast

Water and Sediments, 2004 ;

"FPSO" means floating production, storage and off-loading units ;

"FSU" means floating storage units ;

"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 ;

"Minister" means the Minister responsible for maritime transport;

"Nigerian vessel" means a vessel owned in Nigeria or a vessel registered or required to be registered by law, or any other vessel based in Nigeria and operating under the authority of the Government;

"Nigerian waters" includes Nigeria's territorial waters and Exclusive Economic Zone, as provided for by law ;

"Notice to Mariners" means a Notice entitled as such published by the Agency, and includes any amendment made to the Notice from time to time ;

"Organisation" means the International Maritime Organisation ;

"Owner" means the owner of a vessel to which these Regulations apply, and includes any Organisation or person (including a manager or bareboat charterer of the vessel) who has assumed responsibility for operation of the vessel, and is thereby responsible for its proper operation in accordance with these Regulations, and as required by the Agency under these Regulations ;

"Party" means a State which is a Party to the Convention ;

"Port" includes all ports declared under any law, and all other places where vessels load or discharge passengers or cargoes ;

"recognised classification society" means an Organisation recognised by the Agency for the purpose of conducting inspections and surveys in accordance with these Regulations on behalf of the Agency; and includes all prescribed classification societies under any law related to the registration of vessels ; and

"Sediments" means matters settled out of Ballast Water within a vessel.

(2) Words and phrases used in these Regulations shall have the same meaning as is given to them in the Merchant Shipping Act 2007 and the Ballast Water Management Convention.

24.—(1) These Regulations may be cited as the Merchant Shipping (Ballast Water Management) Regulations, 2012. Citation.

SCHEDULE 1

FORM OF INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE
INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the Merchant Shipping (Ballast Water Management) Regulations 2012 further to the provisions of the International Convention for the Control and Management of Ships' Ballast Water and Sediments (hereinafter referred to as "the Convention") under the authority of the Government of

THE FEDERAL REPUBLIC OF NIGERIA

By: The Director General, Nigerian Maritime Administration and Safety Agency, NIMASA

Particulars of ship

Name of ship

Distinctive number or letters.....

Port of registry

Gross Tonnage

IMO number

Date of Construction

Ballast Water Capacity (in cubic metres).....

Details of Ballast Water Management Method(s) Used

Method of Ballast Water Management used.....

Date installed (if applicable)

Name of manufacturer (if applicable).....

The principal Ballast Water Management method(s) employed on this ship is/are:

☐ in accordance with Regulation 12(1)(a)

☐ in accordance with regulation 12(1)(b)
 (describe)

THIS IS TO CERTIFY :

1. That the ship has been surveyed in accordance with Regulation 4 of the Annex to the Convention ; and
2. That the survey shows that Ballast Water Management on the ship complies with the Annex to the Convention.

This certificate is valid until subject to surveys in accordance with regulation E-1 of the Annex to the Convention.

Completion date of the survey on which this certificate is based: dd/mm/yyyy

Issued at.....
(Place of issue of certificate)

.....
(Date of issue) (Signature of authorized official issuing the certificate)

(Seal or stamp of the Agency)

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)

THIS IS TO CERTIFY that upon a survey required by regulation E-1 of the Annex to the Convention the ship was found to comply with the relevant provisions of the Convention:

Annual survey: Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

Annual/Intermediate survey*: Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

Annual/Intermediate survey*: Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

Annual survey: Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

**ANNUAL/INTERMEDIATE SURVEY
IN ACCORDANCE WITH REGULATION E-5.8.3**

THIS IS TO CERTIFY that, at an annual / intermediate* survey in accordance with regulation E-5.8.3 of the Annex to the Convention, the ship was found to comply with the relevant provisions of the Convention :

Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

**ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID FOR LESS
THAN 5 YEARS WHERE REGULATION E-5.3 APPLIES**

The ship complies with the relevant provisions of the Convention, and this Certificate shall, in accordance with regulation E-5.3 of the Annex to the Convention, be accepted as valid until.....

Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

**ENDORSEMENT WHERE THE RENEWAL SURVEY HAS BEEN
COMPLETED AND REGULATION E-5.4 APPLIES**

The ship complies with the relevant provisions of the Convention and this Certificate shall, in accordance with regulation E-5.4 of the Annex to the Convention, be accepted as valid until.....

Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

**ENDORSEMENT TO EXTEND THE VALIDITY OF THE CERTIFICATE
UNTIL REACHING THE PORT OF SURVEY OR FOR A PERIOD OF
GRACE WHERE REGULATION E-5.5 OR E-5.6 APPLIES**

This Certificate shall, in accordance with regulation E-5.5 or E-5.6*
of the Annex to the Convention, be accepted as valid until.....

Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

**ENDORSEMENT FOR ADVANCEMENT OF ANNIVERSARY DATE
WHERE REGULATION E-5.8 APPLIES**

In accordance with regulation E-5.8 of the Annex to the Convention the
new Anniversary date is

Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

In accordance with regulation E-5.8 of the Annex to the Convention the
new Anniversary date is

Signed
(Signature of duly authorized official)

Place

Date.....
(Seal or stamp of the Agency)

SCHEDULE 2
FORM OF BALLAST WATER RECORDS BOOK
INTERNATIONAL CONVENTION FOR THE CONTROL AND
MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

Period From :..... To :.....

Name of Ship :.....

IMO number :.....

Gross tonnage :.....

Flag :.....

Total Ballast Water capacity (in cubic metres)

The ship is provided with a Ballast Water Management plan ☐

Diagram of ship indicating ballast tanks :

Introduction.

1. In accordance with regulation B-2 of the Annex to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, a record is to be kept of each Ballast Water operation. This includes discharges at sea and to reception facilities.

**Ballast Water
and Ballast
Water
Management**

2. "*Ballast Water*" means water with its suspended matter taken on board a ship to control trim, list, draught, stability, or stresses of a ship. Management of Ballast Water shall be in accordance with an approved Ballast Water Management plan and taking into account Guidelines³ developed by the Organization.

**Entries in the
Ballast Water
Records
Book.**

3. Entries in the Ballast Water record book shall be made on each of the following occasions:

3.1. When Ballast Water is taken on board :

1. Date, time and location port or facility of uptake (port or lat/long), depth if outside port.

2. Estimated volume of uptake in cubic metres

3. Signature of the officer in charge of the operation.

3.2. Whenever Ballast Water is circulated or treated for Ballast Water Management purposes:

1. Date and time of operation

2. Estimated volume circulated or treated (in cubic metres)

3. Whether conducted in accordance with the Ballast Water Management plan

4. Signature of the officer in charge of the operation

3.3. When Ballast Water is discharged into the sea :

1. Date, time and location port or facility of discharge (port or lat/long).
2. Estimated volume discharged in cubic metres plus remaining volume in cubic metres.
3. Whether approved Ballast Water Management plan had been implemented prior to discharge.
4. Signature of the officer in charge of the operation.

3.4. When Ballast Water is discharged to a reception facility :

1. Date, time, and location of uptake
2. Date, time, and location of discharge
3. Port or facility
4. Estimated volume discharged or taken up, in cubic metres
5. Whether approved Ballast Water Management plan had been implemented prior to discharge
6. Signature of officer in charge of the operation

3.5. Accidental or other exceptional uptake or discharges of Ballast Water:

1. Date and time of occurrence
2. Port or position of the ship at time of occurrence
3. Estimated volume of Ballast Water discharged
4. Circumstances of uptake, discharge, escape or loss, the reason therefore and general remarks.
5. Whether approved Ballast Water Management plan had been implemented prior to discharge
6. Signature of officer in charge of the operation

3.6. Additional operational procedure and general remarks

4. The volume of Ballast Water on board should be estimated in cubic metres.

The Ballast Water record book contains many references to estimated volume of Ballast Water. It is recognized that the accuracy of estimating volumes of ballast is left to interpretation.

Volume of
Ballast
Water.

RECORD OF BALLAST WATER OPERATIONS
SAMPLE BALLAST WATER RECORD BOOK PAGE

Name of Ship : Distinctive number or letters

<i>Date</i>	<i>Item (number)</i>	<i>Record of operations/signature of officers in charge</i>

Signature of Master

MADE at Abuja this 1st day of June, 2012.

SENATOR IDRIS UMAR,
Honourable Minister of Transport

EXPLANATORY NOTE

These Regulations give effect in Nigeria to the International Convention on Ballast Water Management and prohibits the discharge of ballast water into the marine environment outside the stipulations of the regulations which is to be enforced through a robust inspection and detention regime.