

REPUBLIC OF SOUTH AFRICA

**DRAFT BALLAST WATER MANAGEMENT BILL,
2013**

(As introduced in the National Assembly as a section 75 Bill)

(The English text is the official text of the Bill)

(MINISTER OF TRANSPORT)

[B- 2013]

Draft Ballast Water Management Bill, 2013

To provide for the prevention of the introduction of alien and invasive species via ship's ballast water and sediment, the implementation of the International Convention for the Control and Management of Ship's Ballast Water and Sediment 2004, and matters related thereto.

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PRELIMINARY

1. Definitions

(1) In this Act, unless the context indicates otherwise—

"Active Substance" means a substance or organism, including a virus or a fungus, that has a general or specific action on or against an Alien and/or Invasive Species.

"Administration" means the Government of the Republic of South Africa;

"Alien species" means –

- (a) a species that is not an indigenous species; or
- (b) an indigenous species translocated or intended to be translocated to a place outside its natural distribution range in nature, but not an indigenous species that has extended its natural distribution range by natural means of migration or dispersal without human intervention;

"Annex" means the Annex to the Convention;

"Anniversary date" means the day and month of each year corresponding to the date of expiry of the Certificate;

"Authority" means the South African Maritime Safety Authority established by section 2(1) of the South African Maritime Safety Authority Act (Act 5 of 1998);

"Ballast Water" means water with its suspended matter taken on board a ship to control trim, list, draught, stability or stresses of the ship;

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

"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 alien and potentially invasive aquatic organisms and pathogens within ships Ballast Water and Sediments;

"Biological diversity" means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part and also includes diversity within species, between species, and of ecosystems.

"Certificate" means the International Ballast Water Management Certificate specified in the Convention;

"charge" means any charge contemplated in section 54;

"Company" means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on

assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code;

"Constructed" in respect of a ship means a stage of construction where:

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

"control", in relation to an alien or invasive species, means—

- (a) to combat or eradicate an alien or invasive species; or
- (b) where such eradication is not possible, to prevent, as far as may be practicable, the recurrence, re-establishment, re-growth, multiplication, propagation, regeneration or spreading of an alien or invasive species;

"Convention" means the International Convention for the Control and Management of Ship's Ballast Water and Sediments 2004 and the Annex thereto;

"court" means a competent court having jurisdiction;

"Department" means the national Department of Transport;

"environment" means the surroundings within which humans exist and which comprise -

- (i) the land, water and atmosphere of the earth;
- (ii) micro-organisms, plant and animal life;
- (iii) any part or combination of (i) and (ii) and the interrelationships among and between them; and
- (iv) the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and wellbeing;

"fishing vessel" means a fishing vessel as defined in section 1 of the Marine Living Resources Act, 1998 (Act No. 18 of 1998);

"foreign port" means any place in another state, whether proclaimed a public harbour or not, to which ships may resort for shelter or to ship or unship goods or passengers;

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

"FSO" means a floating storage and offloading unit;

"FSU" means floating storage units;

"Gross tonnage" means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969 as amended, or any successor Convention;

"Guidelines developed by the Organisation" means the guidelines developed for the uniform implementation of the Convention;

"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;

"High Seas" means the waters beyond South African waters, but does not include waters subject to the particular jurisdiction of another State;

"IMO" means the International Maritime Organization;

"invasive species" means any species whose establishment and spread outside of its natural distribution range—

- (a) threatens ecosystems, habitats or other species or have demonstrable potential to threaten ecosystems, habitats or other species; and
 - (b) may result in economic or environmental harm or harm to human health;
- and includes "Harmful aquatic organisms and pathogens" as defined in the Convention and this Act;

"listed invasive species" means any invasive species listed in terms of section 70(1) of National Environmental Management: Biodiversity Act (Act 10 of 2004);

"Major conversion" means a conversion of a ship:

- (a) which changes its ballast water carrying capacity by 15% or more; or
- (b) which changes the ship type; or
- (c) which, in the opinion of the Authority, is projected to prolong its life by ten years or more; or
- (d) which results in modifications to its ballast water system other than component replacement-in-kind.

"Marine Notice" means a notice described as such and issued by the Authority;

"master" means the person having lawful command or charge, or for the time being in charge, of a ship, but does not include a pilot aboard a ship solely for the purpose of providing navigational assistance;

"Merchant Shipping Act, 1951" means the Merchant Shipping Act 1951, (Act No. 57 of 1951) as amended;

"Minister" means the Minister of Transport;

"National Ports Authority" (NPA) means the business unit or division of Transnet which immediately prior to the commencement of the National Ports Act, 2005 constituted and was known as the "National Ports Authority of South Africa";

"NEMA" means the National Environmental Management Act (Act 107 of 1998);

"NEMBA" means the National Environmental Management: Biodiversity Act (No. 10 of 2004);

"officer" means a person, including the Minister, exercising powers or performing duties in terms of this Act;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"Organization" means the International Maritime Organization;

"owner" means the registered owner;

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

"port", in relation to—

(a) a country other than the Republic, means a place, whether proclaimed a public harbour or not, and whether natural or artificial, to which ships may resort for shelter or to ship or unship goods or passengers;

(b) the Republic means any of the ports of Richards Bay, Durban, East London, Ngura, Port Elizabeth, Mossel Bay, Cape Town, Saldanha Bay, Port Nolloth or a port which has been determined as such in terms of section 10 (2) of the National Ports Act (Act 12 of 2005); or a fishing harbour declared under Section 27 (1) of the Marine Living Resources Act (Act 18 of 1998); or any place in the Republic that has been designated under any law as a place from or at which any ship or any ship of a particular type may be launched, beached, moored or berthed;

"proper officer" means a proper officer as defined in section 2(1) of the Merchant Shipping Act, 1951;

"Reception Facility" means a facility established within the port environs to receive, for example, waste, ballast water or ballast sediments from visiting vessels for the purpose of subsequently disposing of them in an environmentally acceptable manner;

"registered", except with reference to the law of another state, means registered or deemed to be or regarded as registered in terms of the Ships Registration Act (Act 58 of 1998);

"registered agent", in relation to a ship, means the person whose name and address are entered in the Register in respect of the ship in terms of section 40 of the Ships Registration Act;

"regulation" means a regulation made under section 49;

"Schedule" means Schedule 1 to this Act which encompasses the provisions dealt with in the Annex to the Convention;

"Sediments" means matters settled out of Ballast Water within a ship;

"ship" means a vessel of any type whatsoever operating in the aquatic environment and includes submersibles, floating craft, floating platforms, FPSO's FSOs and FSUs.

"South African Maritime Safety Authority Act, 1998" means the South African Maritime Safety Authority Act, 1998 (Act No. 5 of 1998);

"South African ship" means a ship having South African nationality in terms of section 3 of the Ships Registration Act;

"South African waters" means the seashore, internal waters, territorial waters, the exclusive economic zone, and in relation to the sedentary species as defined in Article 77 of the United Nations Convention on the Law of the Sea, the continental shelf as defined Section of the Maritime Zones Act, 1994, and including tidal lagoons and tidal rivers in which a rise and fall of the water level takes place as a result of the tides;

"this Act" includes the Schedules.

2. Objectives

(1) The objectives of this Act are to:

- (a) Minimise or prevent the transfer of alien and invasive species, including pathogens, into South Africa's coastal waters via ship's ballast water and sediments;
- (b) Minimise or prevent harmful impacts by invasive species on the biological diversity within South African Waters;
- (c) Minimise or prevent harmful impacts by invasive species on the environment, human health property or resources of South Africa;
- (d) Provide for cooperative governance in both the management of alien and invasive species introduced by ships' ballast water and the conservation of biological diversity; and
- (e) Give full and complete effect to the Republic's obligations in terms of the Convention.

3. Application of Act

(1) Except as expressly provided otherwise in this Act, this Act and any amendment thereof shall apply to:

- (a) ships which are registered or licensed in the Republic in terms of the Ships Registration Act (Act 58 of 1998) or which are required to be so licensed, and shall so apply wherever such vessels may be;
- (b) ships not entitled to fly the flag of South Africa but which operate under the authority of South Africa;
- (c) ships other than those referred to in sub-Sections (a) or (b) when they are in ports or offshore terminals of South Africa or within South African waters.
- (d) ships in the Prince Edward Islands as referred to in section 1 of the Prince Edward Islands Act, 1948 (Act 43 of 1948): Provided that in its application voyages between ports in the Republic and ports in those islands shall be deemed to be voyages between ports in the Republic and ports outside the Republic.

(2) This Act shall not apply to:

- (a) ships not designed or constructed to carry Ballast Water;
- (b) ships which operate only in South African waters, unless the Authority in consultation with the Minister of Environmental and Water Affairs and/or Minister of Health determines that the discharge of Ballast Water from such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States;
- (c) ships which only operate in South African waters and on the High Seas, unless the Authority in consultation with the Minister of Water and Environment Affairs and/or Minister of Health determines that the discharge of Ballast Water from

such ships would impair or damage their environment, human health, property or resources, or those of adjacent or other States.

(d) ships belonging to the South African National Defence Force or to a naval, military or air force of another state;

(e) ships owned or operated by the State and used, for the time being, only on government non-commercial service; and

(f) ships containing permanent Ballast Water in sealed tanks and that is not subject to discharge.

(3) Subject to subsection (2), this Act binds the State and all organs of state.

CHAPTER I : ADMINISTRATION

4. Authority responsible for administration of Act

(1) The Authority shall be responsible for the administration of this Act, and shall have control of all matters incidental thereto except where provision is expressly made for consultation with other organs of State.

(2) The Authority shall, subject to the provisions of this Act or any other law, have such powers and perform such duties as are assigned to it by the Minister.

(3) All powers conferred and all duties imposed upon the Authority may be exercised or performed by the Authority, or by a person or organization under a delegation from or under the control or direction of the Authority.

5. Powers of Authority

(1) The Authority may—

(a) appoint such officers as it considers necessary for the administration of this Act including proper officers as defined in the Merchant Shipping Act;

(b) recognize or appoint as a ship surveyor or other surveyor any qualified person whom it deems fit to act as such for the purposes of this Act;

(c) subject to the concurrence of the Ministers of the relevant Departments, delegate by notice in the Government Gazette the responsibility for certain duties required to be performed in order to meet the objectives of this Act to other Departments of State or agencies.

6. Duty of officers to ensure compliance with this Act

(1) If an officer or proper officer has reason to suspect that the provisions of this Act are not being or have not been complied with in respect of any ship within the Republic or South African waters, which is not registered in the Republic, or in respect of any South African ship wherever it may be, the officer shall take such steps as in his or her opinion are necessary to ensure compliance with the said provisions.

7. Powers of officers

(1) Any—

(a) officer, proper officer or surveyor; or

(b) member of a court of marine enquiry, maritime court or court of survey established in terms of the Merchant Shipping Act; or

(c) any other person authorized or required by or under this Act, or generally or specially authorized or required by the Authority, to make any survey or inspection or conduct any investigation, may, in the execution of his or her duty or the exercise of his or her functions—

(i) board any South African ship wherever it may be, or any ship other than a South African ship while it is within South African waters, and inspect the same or any part thereof, or any equipment thereof, or any articles on board, or any log-books, certificates or other documents relating to the ship or the crew thereof, and muster the crew of the ship and interrogate them, and require the master and crew to demonstrate the related competency at their place or places of duty;

(ii) enter any premises, including any land, structure, vehicle or vessel, and inspect the same or any articles therein;

(iii) by written notice or otherwise summon any person who:

- o in his or her opinion may be able to give information which is likely to assist in the carrying out of such duty; or
- o is suspected or believed to have possession or custody or control of any book, document or thing the inspection of which is likely to assist in the carrying out of such duty;

to appear before him or her at a time and place specified, to be interrogated or to produce that book, document or thing;

(iv) administer an oath to any person appearing in obedience to any summons or otherwise, and interrogate such person and inspect and detain any book, document or thing produced;

(v) require any person interrogated to subscribe to a declaration of the truth of the statement made by him or her;

(vi) copy any document inspected or produced during the course of the inspection.

(2) Every person—

(a) shall upon demand assist to the best of his or her ability any officer or other person or court in the exercise of any of the powers conferred by subsection (1);

(b) summoned under sub-section (iii) of subsection (1) whose reasonable expenses have been paid or offered to be paid shall attend at the time and place specified, and remain in attendance until excused by the officer or other person or court from further attendance;

(c) shall take the oath administered to him or her by any officer or other person or court under sub-section (iv) of subsection (1);

(d) shall answer fully and satisfactorily, to the best of his or her ability, all questions lawfully posed by any officer or other person or court under sub-section (i) or (iv) of subsection (1), and, upon being required to do so, produce any book, document or thing in his or her possession or control: Provided that in connection with the interrogation of any such person by, or the production of any such book, document or thing to any such officer or other person or court, the law relating to privilege, as applicable to a witness summoned to give evidence or produce any book, document or thing before a court of law shall apply; and

(e) upon being required to do so, shall subscribe to a declaration of the truth of any statement made by him.

(3) Any person or court referred to in sub-section (a), (b) or (c) of subsection (1) may in the execution of the relevant duties or functions, as necessary, direct that any South African ship wherever it may be, or any ship other than a South African ship while it is within South African waters, be taken into dock at the owner's expense, in order that every part of the vessel and its equipment may be inspected.

8. Communication of information

(1) The Department shall report to the Organisation and, where appropriate, make available to other Parties the following information:

- (a) Any requirements and procedures relating to Ballast Water Management in South African waters, including this Act, additional measures and related regulations and guidelines;
- (b) The availability and location of reception facilities for the environmentally safe disposal of Ballast Water or Sediments; and
- (c) Any requirements for information from a ship wishing to apply for an exemption or to be considered as an exception to the requirements of the Act.

(2) The Department shall liaise with the national media and stakeholders on issues related to Ballast Water Management as necessary.

9. Advisory Committee

(1) The Minister may from time to time:

- (a) appoint a committee for the purpose of advising him in regard to any particular matter dealt with by this Act;
- (b) determine its composition and functions;
- (c) determine, in consultation with the Minister of Finance, the basis and extent of the remuneration and payment of expenses of any member of such forum or committee.

CHAPTER II - CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS

10. Discharge of ballast water controlled

(1) Except where expressly provided otherwise in this Act, the owner and master of a ship shall ensure that the discharge of Ballast Water is only conducted subject to Ballast Water Management in accordance with the provisions of this Act and the Convention.

11. Exceptions

(1) The requirements of section 10, Schedule 1, or any other measures adopted, whether pursuant to section 22 or otherwise, shall not apply to:

- (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: or
- (b) the accidental discharge or ingress of Ballast Water and Sediments resulting from damage to a ship or its equipment:
 - 1. provided that all reasonable precautions have been taken before and after the occurrence of damage or discovery of the damage or discharge for the purpose of preventing or minimising the discharge; and

2. unless the owner, Company or officer in charge wilfully or recklessly caused damage; or
- (c) the uptake and discharge of Ballast Water and Sediments when being used for the purpose of minimising pollution incidents from the ship; or
- (d) the uptake and subsequent discharge on the high seas of the same Ballast Water and Sediments; or
- (e) the discharge of Ballast Water and Sediments from a ship at the same location where the whole of that Ballast Water and those Sediments originated and provided that no mixing with unmanaged Ballast Water from other areas has occurred. If mixing has occurred, the Ballast Water taken from other areas is subject to Ballast Water Management in accordance with this Act.

12. Exemptions

(1) Subject to subsections (2), (3), (4) and (5), the Authority may grant exemptions, in relation to South Africa waters, to any of the relevant requirements of this Chapter, in addition to those exemptions contained elsewhere in this Act, 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 no 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-section 1.1; and
- (d) granted following a risk assessment based on the Guidelines on risk assessment developed by the Organisation.

(2) Such exemptions:

- (a) may only be granted with the concurrence of the Minister of Water and Environmental Affairs and/or Minister of Health;
- (b) shall not be granted by the Authority if doing so would impair or damage the environment, human health, property or resources, or those of adjacent or other States. If the Authority refuses such authorization, it shall notify the flag State of the ship concerned that this Act applies to such ship;

(3) In cases where exemptions are refused, reasons for such refusal shall be provided.

(4) Exemptions granted pursuant to subsection (1) shall not be effective until after communication to the Organization and circulation of relevant information to the Parties.

(5) Any exemptions granted under this section shall be recorded in the Ballast Water record book.

13. Ballast Water Management plan

(1) Every ship to which this Act applies shall have on board and implement a Ballast Water Management plan. Such a plan shall be approved by the Authority taking into account the Guidelines developed by the Organisation. The Ballast Water Management plan shall be specific to each ship and shall at least:

- (a) detail safety procedures for the ship and the crew associated with Ballast Water Management as required by this Act;
- (b) provide a detailed description of the actions to be taken to implement the Ballast Water Management requirements and supplemental Ballast Water Management practices as set out in this Act;
- (c) detail the procedures for the disposal of sediments:
 - 1. at sea; and
 - 2. to shore;
- (d) include the procedures for coordinating shipboard Ballast Water Management that involves discharge to the sea with the Government of the State into whose waters such discharge will take place;
- (e) designate the officer on board in charge of ensuring that the plan is properly implemented;
- (f) contain the reporting requirements for ships provided for under this Act.

14. Ballast Water Record Book

(1) Every ship to which this Act applies shall have on board a Ballast Water record book that may be an electronic record system, or that may be integrated into another record book or system, and which shall contain at least the information specified in Appendix II to Schedule 1.

(2) Ballast Water record book entries shall be maintained on board the ship for a minimum period of two years after the last entry has been made and thereafter in the Company's control for a minimum period of three years.

(3) In the event of a discharge of Ballast Water pursuant to Sections 10 or 11, or to a reception facility designed taking into account the Guidelines developed by the Organisation, or in the event of other accidental or exceptional discharge of Ballast Water not otherwise exempted by this Act, an entry shall be made in the Ballast Water record book describing the circumstances of, and the reason for, the discharge.

(4) The Ballast Water record book shall be kept readily available for inspection at all reasonable times and, in the case of an unmanned ship under tow, may be kept on the towing ship.

(5) Each operation concerning Ballast Water shall be fully recorded without delay in the Ballast Water record book. Each entry shall be signed by the officer in charge of the operation concerned and each completed page shall be signed by the master.

(6) Officers duly authorised by a Party may inspect the Ballast Water record book on board any ship to which this Act applies while the ship is in its port or offshore terminal, and may make a copy of any entry, and require the master to certify that the copy is a true copy. Any copy so certified shall be admissible in any judicial proceeding as evidence of the facts stated in the entry. The inspection of the Ballast Water record book and the taking of a certified copy shall be performed as expeditiously as possible without causing the ship to be unduly delayed.

15. Ballast Water Management Standards

- (1) All South African registered ships to which this Act applies, regardless of construction date or Ballast Water capacity, shall conduct Ballast Water Management that at least meets the standard described in Standard A-2 of Schedule 1 to this Act.
- (2) Ballast water from ships visiting South African ports or offshore terminals shall at least meet the standard described in Standard A-2 of Schedule 1 to this Act regardless of whether they practice Ballast Water Exchange or treatment.
- (3) The requirements of this Section do not apply to ships that discharge Ballast Water to a reception facility designed taking into account the Guidelines developed by the Organisation for such facilities.
- (4) Other methods of Ballast Water Management may also be accepted as alternatives to Ballast Water Exchange or Treatment provided that they at least meet the standard described Standard A-2 of Schedule 1 to this Act and are approved in principle by the Advisory Committee.

16. Ballast Water Management Options

Ballast Water Exchange

- (1) Until 1 January 2016, a ship conducting Ballast Water exchange will be permitted to discharge Ballast Water into South African waters provided that:
 1. the Ballast Water at least meets the standard described in Standard A-2 of Schedule 1; and
 2. the Ballast Water has been exchanged at least 200 nautical miles from the nearest land and in water at least 200 metres in depth.
- (2) In cases where a ship is unable to conduct Ballast Water Exchange in accordance with sub-section (1), such Ballast Water Exchange shall be conducted taking into account the Guidelines developed by the Organisation, 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.
- (3) From January 2016 ships practicing Ballast Water Exchange will not be permitted to discharge Ballast Water into South African water.

Ballast Water Treatment

- (4) Within 18 months of the promulgation of this Act, the Authority must develop approval requirements for Ballast Water Treatment systems on South African registered ships, taking into account the Guidelines developed by the Organisation.
- (5) Notwithstanding the requirements of sub-section 1, Ballast Water Treatment systems which make use of Active Substances or preparations containing one or more Active Substances, shall be approved by the Organisation, based on a procedure developed by the Organisation. This procedure describes the approval and withdrawal of approval of Active Substances and their proposed manner of application. Following withdrawal of approval, the use of the relevant Active Substance or Substances, shall be prohibited within 1 year after the date of such withdrawal.

(6) The approval requirements developed by the Authority shall ensure that Ballast Water Management systems are safe in terms of the ship, its equipment and crew.

17. Prototype Ballast Water Treatment Technologies

- (1) The Authority may establish and carry out a Programme to test and evaluate promising Ballast Water treatment technologies in South Africa. In so doing, the Authority shall:
 - (a) take into account the Guidelines developed by the Organisation; and
 - (b) allow participation only by the minimum number of ships necessary to effectively test such technologies.
- (2) Throughout the test and evaluation period, the treatment system must be operated consistently and as designed.
- (3) Approval of any technologies is dependant on their meeting the approval requirements as described in Section 16.
- (4) For any ship that, prior to the date that the standard in Standard A -2 of Schedule 1 to this Act would otherwise become effective for it, participates in a Programme approved by the Authority to test and evaluate promising Ballast Water treatment technologies, the standard in Standard A -2 of Schedule 1 to this Act shall not apply to that ship until five years from the date on which the ship would otherwise be required to comply with such standard.
- (5) For any ship that, after the date on which the standard in Standard A -2 of Schedule 1 to this Act has become effective for it, participates in a Programme approved by the Authority to test and evaluate promising Ballast Water treatment technologies with the potential to result in treatment technologies achieving a standard higher than that in Standard A-2 of Schedule 1 to this Act, the standard in Standard A -2 shall cease to apply to that ship for five years from the date of installation of such technology.

18. Sediment Management for Ships

(1) All 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.

(2) Ships constructed after the year 2009 should, without compromising safety or operational efficiency, be designed and constructed with a view to minimising the uptake and entrapment of Sediments, facilitate removal of Sediments, and provide safe access to allow for Sediment removal and sampling, taking into account the guidelines developed by the Organisation.

(3) Ships constructed before the year 2009 should, to the extent practicable, comply with this Act.

19. Sediment Reception Facilities

(1) (a) The National Ports Authority shall provide adequate facilities or arrangements for the reception of Sediments in any ports where cleaning or repair of ballast tanks is undertaken.

(b) Such facilities may be provided by the NPA itself, or by arrangement with an appropriate service provider.

(c) The National Ports Authority shall notify the Authority of any ports or terminals where cleaning or repair of ballast tanks is undertaken;

(2) The Authority shall, in consultation with the National Ports Authority, designate ports for the provision of sediment reception facilities and shall notify the Organisation with regards the adequacy or otherwise of such facilities in all South African ports.

20. Duties of officers and crew

(1) The owner and master of a ship shall ensure that officers and crew are familiar with their duties in the implementation of Ballast Water Management particular to the ship on which they serve and are, appropriate to their individual duties, familiar with the ship's Ballast Water Management plan.

21. Equivalent Compliance

(1) The Authority shall, within 18 months of the promulgation of this Act, establish measures which provide equivalent compliance with the requirements of this Act for pleasure craft used solely for recreation or competition or craft used primarily for search and rescue, less than 50 metres in length overall, and with a maximum Ballast Water capacity of 8 cubic metres.

(2) When establishing such measures the Authority shall:

- (a) take into account IMO 'Guidelines for Ballast Water Management Equivalent Compliance (G3); and
- (b) publish such measures by Notice in the Government Gazette.

(3) It shall be the duty of the owner and master of a craft referred to in subsection (1) to comply, and ensure compliance, with any measures established under that subsection.

22. Additional measures

(1) The Authority, in consultation with the Minister of Water and Environmental Affairs, shall develop any additional measures - including standards or other requirements - which it considers necessary to prevent, reduce or eliminate the transfer of alien and invasive species and pathogens through ships' Ballast Water and Sediments.

(2) Prior to establishing standards or requirements under sub-section 1, the Authority shall consult with adjacent or other States that may be affected by such standards or requirements.

(3) In introducing additional measures, the Authority shall:

- (a) take into account the Guidelines developed by the Organisation;
- (b) communicate the intention to establish such additional measure(s) to the Organisation at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measures.

(4) Any such additional measures shall not compromise the safety and security of the ship and in any circumstances conflict with any other convention with which the ship must comply.

(5) Such additional measures shall, subject to the approval of the Organisation, be published in a notice in the Government Gazette which 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) reflect the approval of the Organisation.

(6) Ships visiting South African ports of offshore terminals shall be required to meet such additional measures in accordance with international law.

(7) The Authority may, by notice published in a Marine Notice, and with the concurrence of the Minister of Water and Environmental Affairs, waive these additional measures for a period of time or in specified circumstances.

23. Warnings concerning Ballast Water uptake in certain areas

(1) The Authority shall by means of a Marine Notice, and in consultation with the Minister of Water and Environmental Affairs, Minister of Health, and/or the National Ports Authority, notify mariners of areas in South African waters where ships should not take on Ballast Water due to known conditions. Such notices shall include:

- (a) the precise coordinates of the area or areas; and,
- (b) where possible, the location of any alternative area or areas for the uptake of Ballast Water.

(2) In addition to such Notices, the Authority shall notify the Organization and any potentially affected coastal States of any areas identified in subsection (1) and the time period for which such warning is likely to be in effect.

(3) The Authority shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

24. Port Ballast Water Management Plans

(1) All commercial ports operated by the National Ports Authority shall have a Port Ballast Water Management Plan. Such plans should include:

- (a) reporting procedures;
- (b) a procedure for the assessment of risk related to the ballast water of incoming ships;
- (c) an overview of available reception facilities for sediment and ballast water;
- (d) an alien and invasive species monitoring plan;
- (e) a map of the port indicating:
 - i) areas of known infestations or pathogens;
 - ii) sewage outfalls;
 - iii) areas subject to regular dredging operations;
 - iv) areas with reduced tidal flushing;
 - v) areas where nocturnal bottom-dwelling organisms are active;
 - vi) areas where propellers may stir up sediment.

CHAPTER III – SURVEYS AND CERTIFICATES (FLAG STATE CONTROL)

25. Surveys

(1) South African-registered ships of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPSOs, shall be subject to the surveys specified in Section C-1 of Schedule 1. Surveys shall be endorsed on the Certificate as required by this Act and the Convention.

(2) The Authority shall establish appropriate measures for ships that are not subject to the provisions of sub-section 1 in order to ensure that the applicable provisions of this Act are complied with.

26. Nominated surveyors and recognised organisations

(1) Surveys of ships for the purpose of enforcement of the provisions of this Act shall be carried out by surveyors appointed by the Authority.

(2) The Authority may, however, entrust the surveys referred to in sub-section (1) either to surveyors nominated for the purpose or to organizations recognized by it, in accordance with the guidelines adopted by the Organization, and the specifications adopted by the Organization.

(3) The Authority, in nominating surveyors or organizations under sub-section (2) shall, as a minimum, empower such nominated surveyors or recognized organizations to:

- (a) require a ship that they survey to comply with the provisions of this Act; and
- (b) carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.

(4) The Authority shall notify the Organization of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or recognized organizations.

27. Issuance of Certificate

(1) A Certificate shall be issued, after successful completion of a survey in accordance with section 25 and section C-1 of the Schedule to any South African ship to which that section applies.

(2) The Certificate shall be issued either by the Authority or by any person or organisation duly authorised by it and in every such case the Authority shall assume full responsibility for the Certificate.

(3) No Certificate shall be issued to a ship entitled to fly the flag of a State which is not a Party.

28. Issuance of Certificate upon request by another Party

(1) The Authority may at the request of the Government of a Party cause a ship to be surveyed and, if satisfied that this Chapter has been complied with, shall issue or authorise the issuance of a Certificate to the ship in accordance with this Act.

(2) A Certificate so issued shall contain a statement to the effect that it has been issued at the request of the Government of a Party and a copy of it together with a copy of the survey report shall be transmitted as early as possible to the Government requesting the survey.

(3) No Certificate shall be issued to a ship which does not fly the flag of a Party.

29. Issuance or Endorsement of a Certificate by Another Party

(1) The Authority may request another Party to cause a ship to be surveyed and, if satisfied that the provisions of the Convention are complied with, to issue or authorise the issuance of a Certificate to the ship, and where appropriate, endorse or authorise the endorsement of the Certificate of that ship.

(2) Copies of the Certificate and the survey report shall be obtained by the Authority.

(3) A Certificate issued by another Party in respect of a South African ship shall contain a statement to the effect that it has been issued at the request of the Authority and shall have the same force and receive the same recognition in South Africa as a Certificate issued by the Authority.

30. Form of Certificate

(1) A Certificate shall be in the form prescribed in Appendix I of Schedule 1.

31. Duration and validity of certificate

(1) Certificates shall be issued for a period not exceeding five years.

(2) The duration and validity of the Certificate shall comply with the specifications set out in Section C-2 of Schedule 1.

32. Corrective action

(1) When the Authority, a nominated surveyor, or a recognized organization determines that the ship's Ballast Water Management does not conform to the particulars of the Certificate required under sections 27, 28 or 229, or is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources, the Authority, surveyor or organization shall immediately:

- (a) ensure that corrective action is taken to bring the ship into compliance;
- (b) notify the relevant surveyor or organization who shall ensure that the Certificate is not issued or is withdrawn as appropriate.

(2) If the ship is in the port of another Party, the appropriate authorities of that State shall be notified immediately.

33. Report of accidents and defects

(1) Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with the Convention or this Act, as appropriate, the owner, operator or other person in charge of the ship shall report at the earliest

opportunity to the Authority, the recognized organization or the nominated surveyor responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by section 25 is necessary.

(2) If the ship is in a port of another Party, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognized organization shall ascertain that such report has been made.

34. Maintenance requirements

(1) The owner, master or agent of any ship to which this Act applies shall ensure that –

(a) the condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Act to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources; and

(b) after any survey of the ship under section 25 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or material associated with the Ballast Water Management plan required by the Convention and covered by the survey without the prior approval of the Authority, except the direct replacement of such equipment or fittings.

35. Transfer of flag

(1) Upon transfer of a South African ship to the flag of another Party, where such State so requests within three months after the transfer has taken place, the Authority shall transmit as soon as possible to the Government of the State concerned, a copy of the Certificate carried by the ship before the transfer and, if available, a copy of the ship's most recent survey report.

(2) Where a ship is transferred to South Africa for flag registration purposes, a new Certificate shall only be issued when the Authority is fully satisfied that the ship is in full compliance with the requirements of this Act.

CHAPTER IV – PORT STATE CONTROL

36. Reporting

(1) All vessels arriving in South African ports from international or national waters and intending to discharge Ballast Water are required to submit a completed Ballast Water Reporting form to the National Port Authority: Port Control a minimum of 24 hours prior to arrival, and preferably 96 hours. The reporting form is attached as Appendix III to the Schedule.

37. Inspection of ships which are not South African ships

(1) A ship, which is not a South African ship, but to which this Act applies may, in any port or offshore terminal in South African waters, be subject to inspection by officers duly authorized by the Authority for the purpose of determining whether the ship is in compliance with the Act. Except as provided in subsection (2) below, any such inspection is limited to:

- (a) verifying that there is on board a valid Certificate, which, if valid shall be accepted; and
 - (b) verifying that there is an approved Ballast Water Management Plan on board and that ballast water management procedures are consistent with this plan; and
 - (c) inspection of the Ballast Water Record Book.
- (2) A more detailed inspection may be carried out in cases where –
- (a) the ship does not carry a valid Certificate, Ballast Water Management Plan or Ballast Water Record Book; or
 - (b) the condition of the ship or its equipment does not correspond substantially with the particulars of the Certificate; or
 - (c) the master or the crew are not familiar with essential shipboard procedures relating to Ballast Water Management, or have not implemented such procedures; or
 - (d) a risk assessment has identified the ship as a potential risk to the environment of South Africa; or
 - (e) third parties have provided information concerning a violation of the Convention.
- (3) The more detailed inspection may include –
- (a) sampling of the ship's Ballast Water, carried out in accordance with the guidelines by the Organization¹;
 - (b) verification of the adequacy of the Ballast Water Management Plan and procedures.
- (4) In the circumstances given in subsection (2), the inspector shall take such steps as will ensure that the ship shall not discharge Ballast Water until it can do so without presenting a threat of harm to the environment, human health, property or resources.

38. Detection of violations and control of ships

- (1) If a ship which is not a South African ship but which is operating in a South African port or offshore terminal is found to have contravened this Act, then, without prejudice to any penalties provided elsewhere in this Act, or any action described in section 37, the Authority may:
- (a) take steps to warn, detain, or exclude the ship; or
 - (b) grant such a ship permission to leave the port or offshore terminal for the purpose of discharging Ballast Water at a location at least 50 nautical miles from the nearest land and in water at least 200 metres in depth or proceeding to the nearest appropriate repair yard or reception facility available, provided doing so does not present a threat of harm to the environment, human health, property or resources.
- (2) If the sampling described in section 37(3)(a) leads to a result, or supports information received from another port or offshore terminal, indicating that the ship poses a threat to the environment, human health, property or resources, the Authority shall prohibit such ship from discharging Ballast Water until the threat is removed.
- (3) An inspector may also inspect a ship when it enters a South African port or offshore terminal, if a request for such an investigation has been received from any other State Party to the Convention, together with sufficient evidence that

¹ At present these guidelines are still under development, so their status will need to be checked before the Bill is finalised.

the ship is operating or has operated in violation of a provision in the Convention. The report of such investigation shall be sent to the State requesting it and to the competent authority of the Government of the ship concerned so that appropriate action may be taken.

39. Notification of control actions

(1) If an inspection conducted pursuant to section 37 indicates a violation of this Act, the Authority shall notify the ship. The Department/Authority shall forward a report to the Government of the ship concerned, including any evidence of the violation.

(2) In the event that any action is taken in relation to a ship pursuant to section 37(3) or section 38(1) or (2), the officer carrying out such action shall forthwith inform, in writing, the Government of the ship concerned, or if this is not possible, the consul or diplomatic representative of the ship concerned, of all the circumstances in which the action was deemed necessary. In addition, the organization responsible for the issue of the Certificate shall be notified.

(3) The Authority shall, in addition to parties mentioned in subsection (2), notify the next port of call of all relevant information about the violation, if it is unable to take action as specified in to section 37(3) or section 38(1) or (2) or if the ship has been allowed to proceed to the next port of call.

40. Undue delay to ships

(1) The Authority shall make every possible effort to avoid undue detaining or delaying of a ship under section 37.

(2) A ship that is unduly detained or delayed under sections 37, 38 or 39 shall be entitled to claim compensation for any loss or damage suffered provided that the onus of proof will rest upon the ship claiming that it has been unduly detained or delayed.

CHAPTER V – ENFORCEMENT

41. Offences and Penalties

(1) (a) Any person who contravenes any provision of this Act, or who fails to comply with any provision thereof with which it is his or her duty to comply shall be guilty of an offence.

(b) The owner and the master of a ship that does not comply with the requirements of this Act, shall be guilty of an offence.

(2) No person shall be guilty of an offence under sub-section (1) if he/she can show that he/she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(3) Any person convicted of an offence under sub-section (1) shall be liable to a fine not exceeding ZAR 2 million, or to imprisonment for a period not exceeding five years, or to such fine as well as such imprisonment.

(4) Where an offence under this section is committed, or would have been committed save for the operation of sub-section (2), by any person due to the act or default of some other person, that other person is guilty of the offence, and a person may be charged with and convicted of an offence by virtue of this

subsection whether or not proceedings are taken against the first mentioned person.

(5) Any person who, after being sworn by an officer or other person or court in the exercise of the said powers, gives a false answer to any question put to him, or makes a false statement on any matter, knowing that answer or statement to be false, shall be deemed to be guilty of perjury.

42. Service of documents on shipowners, application of fines, etc.

(1) Any document required or authorised, by virtue of any statutory provision, to be served on a shipowner for the purposes of the institution of, or otherwise in connection with, proceedings for an offence under this Act alleged to have been committed by the owner, shall be treated as duly served on that owner if:

- (a) a copy thereof has been personally to the person on whom the document is to be served; or
- (b) a copy has been sent to him by registered post, enclosed in an envelope upon which is written his name and address; or
- (c) a copy has been left for him with a member of his household at his dwelling; or
- (d) if no person belonging to his household can be found there, a copy has been affixed to the principal outer door of the said dwelling or of any place where he actually resides or was last known to reside; or
- (e) if the document is to be served on the master of a ship or on a person belonging to a ship, a copy thereof has been left for him on board that ship with the person being or appearing to be in command or charge of the ship; or
- (f) if the document is to be served on the master of a ship, and there is no master, and the ship is within South African waters, it has been served on the owner of the ship, if he is within the Republic, or on an agent of the owner residing in the Republic, or if no such agent is known or can be found, a copy thereof has been affixed to the mast of the ship.

(2) A person exercising the power of detention in respect of an alleged contravention of this Act shall immediately release the ship if-

- (a) no proceedings for the offence in question are instituted within 3 working days including the day the ship is detained;
- (b) such proceedings, having been instituted through exercise of the power conferred by subsection (1), within that period, are concluded without the master or owner being convicted;
- (c) either-
 - (i) the sum of ZAR 1million is paid to the Authority by way of security; or
 - (ii) security which, in the opinion of the Authority, is satisfactory and is for an amount not less than one million South African Rands is given to the Authority, by or on behalf of the master or owner; or
- (d) where the master or owner is convicted of the offence, any costs or expenses ordered to be paid by him, and any fine imposed on him, have been paid, or;
- (e) the release is ordered by a court or tribunal referred to in Article 292 of the United Nations Convention on the Law of the Sea, 1982, and any bond or other financial security ordered by such a court or tribunal is posted.

(3) The Authority shall repay any sum paid in pursuance of subsection (2) (c) 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.

(4) Where a sum has been paid, or security has been given, by any person in pursuance of subsection (2) (c) 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) any balance shall be repaid to the person paying the sum, or giving the security.

(5) Where a fine imposed by a Court in proceedings against the owner or master of a ship for an offence under this Act is not paid or any costs or expenses ordered to be paid by him are not paid at the time ordered by the Court, the Court shall, in addition to any other powers for enforcing payment, have power to direct the amount remaining unpaid to be levied by distress or arrestment and sale of the ship, her tackle, furniture and apparel.

(6) Where a person is convicted of an offence under this Act, and the Court imposes a fine in respect of the offence, then if it appears to the Court that any person has incurred, or will incur, expenses resulting from the introduction of an invasive species to South African waters, including making good any damage, which is attributable to the offence, the Court may order the whole or part of the fine to be paid to that person for or towards defraying those expenses.

43. Administrative penalty on admission of guilt

(1) If a person—

- (a) admits to the Authority that he or she has contravened or failed to comply with any provision of this Act, which contravention or failure constitutes an offence;
- (b) agrees to abide by the decision of the Authority; and
- (c) deposits with the Authority the sum determined by it, but not exceeding the maximum fine that may be imposed on a conviction for the contravention or failure in question,

the Authority may, after any enquiry that it may deem fit, determine the matter summarily and may, without legal proceedings, order the whole or any part of the said deposit to be forfeited to the State by way of a penalty.

(2) There shall be a right of appeal to the Minister from a determination or order by the Authority in terms of subsection (1), whereby a penalty exceeding ZAR 200,000 is imposed, provided that such right must be exercised within a period of three months from the date of the determination or order.

(3) The imposition of a penalty in terms of subsection (1) is deemed not to be a conviction of an offence, but no prosecution in respect of the offence in question may thereafter be instituted.

44. Jurisdiction

(1) Any offence in terms of this Act is, for purposes in relation to the jurisdiction of a court to try the offence, deemed to have been committed within the area of jurisdiction of the court in which the prosecution is instituted.

(2) Notwithstanding anything to the contrary in any other Act, a Magistrate's Court has jurisdiction to impose any penalty prescribed by this Act.

45. Restriction on jurisdiction over offences outside of South Africa

(1) No proceedings for an offence of contravening any provision of this Act by a ship not being a South African ship, which relates to a discharge in the internal waters, territorial seas or exclusive economic zone of another State shall be instituted unless-

- (a) that State, the flag State or a State damaged or threatened by the discharge requests that proceedings be taken; or
- (b) the discharge has caused or is likely to cause damage in South African waters.

(2) Where proceedings for an offence of contravening any provision of this Act by a ship not being a South African ship which relates to a discharge in the internal waters, territorial seas or exclusive economic zone of another State have been instituted but not concluded, and that State requests suspension of the proceedings, then-

- (a) proceedings shall be suspended; and
- (b) the Authority shall transmit all the evidence and Court records and documents relating to the case, together with any sum paid or security given pursuant to section 41(2) (c) to that State.

46. Suspension of proceedings at flag State request

(1) This section relates to an alleged offence or contravention of any provision of this Act by a ship which is not a South African ship, in relation to a discharge outside South African waters.

(2)

(a) Any proceedings for such an offence shall be stayed if the Court is satisfied that the flag State has instituted proceedings corresponding to the proceedings in South Africa in respect of the discharge, within six months of the institution of proceedings in South Africa.

(b) Sub-section (a) above does not apply-

- (i) where the discharge resulted in damage in excess of ZAR 1 million to South Africa; or
- (ii) the Authority has certified that the flag State has repeatedly disregarded its obligation to enforce effectively the requirements of the Convention referred to in this Act in respect of its ship.

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

(4) Where the costs of the Authority incurred in respect of proceedings suspended under subsection (2) have been paid, any money paid or security given under section 41 (2) (c) shall be released.

47. Admissibility of documentary evidence

(1) A document that is admissible in evidence in terms of this Act is on mere production thereof admissible in evidence in any proceedings as *prima facie* evidence of any matter stated in the document in pursuance of this Act or in pursuance of any duty in terms of this Act, and of the fact that it was signed by the person by whom it purports to be signed.

(2) The person to whose custody a document referred to in subsection (1) is entrusted, must against payment of the relevant charge, supply a copy of or extract from the document, certified in writing and signed by him or her, to any person applying for such a copy or extract.

(3) A document purporting to be a copy or extract supplied in terms of subsection (2) is admissible in evidence.

48. Appeals

(1) A person whose application for an exemption in terms of Section 11 of the Act has been refused, or whose request to be considered as an exception in terms of Section 10 of the Act, or who has been denied a Certificate in terms of Sections 27 or 28 of the Act, may lodge with the Minister a written appeal against the decision within 30 days after having been informed of the decision, or, if the applicant is not notified of the decision, within 60 days of the relevant decision being announced.

(2) An appeal made under subsection (1) must—

- (a) state clearly the grounds of the appeal;
- (b) state briefly the facts on which the appellant relies and include any relevant information that was not placed before the decision-maker and which the appellant believes should be considered on appeal; and
- (c) comply with any other requirements that may be prescribed.

(3) The Minister must either—

- (a) consider and make a decision on the appeal;
- (b) redirect the appeal to the Minister for Water and Environmental Affairs to consider and make a decision on the appeal; or
- (c) designate a panel of persons to consider and decide the appeal.

(4) An appeal under this section does not suspend the decision against which the appeal is lodged unless the Minister, Minister for Water and Environmental Affairs or the appeal panel considering the appeal directs otherwise.

(5) The Minister may, on good cause shown, extend the period within which an appeal may be lodged in terms of this Chapter.

(6) The Minister may dismiss an appeal that he or she considers to be trivial, frivolous or manifestly without merit.

49. Appeal panel

(1) If the Minister decides that the appeal must be considered and decided by an appeal panel, the Minister must designate -

- (a) a number of persons with appropriate knowledge as members of the panel; and
 - (b) one of the panel members as the presiding member.
- (2) The presiding member of the appeal panel decides when and where the panel shall meet.
- (3) An appeal panel must -
- (a) consider and decide the appeal in accordance with the prescribed procedure; and
 - (b) keep a record of its proceedings and decisions.

50. Decisions

- (1) The Minister, Minister for Water and Environmental Affairs or appeal panel considering an appeal may—
- (a) either uphold or refuse the appeal; and
 - (b) when upholding or refusing the appeal, make such other orders as may be appropriate.
- (2) If the appeal is upheld against—
- (a) a refusal to grant an exemption or exception, the Minister, Minister for Water and Environmental Affairs or appeal panel may grant the exemption or exception unconditionally or subject to conditions;
 - (b) a refusal to issue a Certificate, the Minister or appeal panel may instruct the Authority to issue a Certificate;
 - (c) the cancellation of a Certificate, the Minister or appeal panel may restore the Certificate.

51. Protection of Government and public officers

No suit shall be maintained against the Department, the Authority or any public officer or other person appointed or authorised to perform any function under this Act in respect of anything done or omitted to be done by him in good faith in the exercise or performance of any power, authority or duty conferred or imposed on him under this Act.

CHAPTER VI - REGULATIONS

52. Power to amend Act

- (1) The Minister may for the purpose of giving effect to any amendment or replacement of the Convention -
- (a) by order make such amendment to any provision of this Act; or
 - (b) make regulations, as appear to him to be necessary or expedient for this purpose; and any such order shall be subject to affirmative resolution.

53. Regulations

(1) The Minister may make regulations —

- (a) for the further implementation of the Convention or for the administration of this Act, including for the purpose of establishing committees, and prescribing fees and other payments; and
- (b) for all matters that are necessary or expedient to achieve the objectives of this Act.

(2) Without prejudice to the generality of subsection (1), the Minister shall, within 3 years of the promulgation of the Act, make regulations prescribing — ²

- (a) Reporting requirements;
- (b) The requirements for Ballast Water Management Plans;
- (c) Ballast Water Exchange and Treatment;
- (d) Equivalent Compliance;
- (e) Reception facilities, including criteria for determining the adequacy and accessibility of designated sediment reception facilities at ports and terminals;
- (f) Ballast Water Sampling procedures;
- (g) Approval of Ballast Water Management Systems;
- (h) Additional measures;
- (i) Risk assessment for purposes of this Act;
- (j) Approval and oversight of prototype ballast water treatment technology programmes;
- (k) Procedures for the application for and issuance of Ballast Water Management Certificates, including the information and evidence to be provided;
- (l) Procedures for the application for exemptions and exceptions.

(3) The regulations may—

(a) make different provision for different classes or descriptions of ships and for different circumstances;

(b) without prejudice to the generality of sub-section (a), make provision for the granting of exemptions or dispensations by the Authority from specified requirements of the regulations, subject to any condition that it may deem fit to impose;

(c) make any incidental or supplementary provisions that appear to the Minister to be necessary or expedient, including provisions authorising investigations and conferring powers of inspection.

² I have reduced this to those which are really important for the functioning of the Act and included a timeline – but not sure if it is not still too detailed? Many of them would be based on the IMO Guidelines.

CHAPTER VII – GENERAL**54. Charges**

(1) The Authority may, for the purposes of this Act, impose charges under section 44 of the Maritime Safety Authority Act, 1998, in respect of—

- (a) surveys in terms of this Act;
- (b) the lodging and registration of documents or information;
- (c) the issuance of Ballast Water Management Certificates;
- (d) applications for exemption of exception.

(2) The Authority may also impose a levy for ballast water discharges.

55. Exemption from stamp duty

No stamp duty is payable in respect of any document required or issued in terms of this Act.

56. Repeal and Amendment of Laws

The laws mentioned in Schedule 2 are hereby amended to the extent indicated in the third column thereof.

57. Short title and commencement

This Act is called the Ballast Water Management Act, 2013 , and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE 1: STANDARDS, ADDITIONAL MEASURES, WARNINGS, SURVEYS AND CERTIFICATION REQUIREMENTS

Section A: Standards for Ballast Water Management

Standard A-1 *Ballast Water Exchange*

1. Ships performing Ballast Water Exchange are required to meet Standard A-2.
2. From 2016 ships practicing Ballast Water Exchange will be prohibited from discharging Ballast Water into South African waters.

Standard A-2 *Ballast Water Performance Standard*

1. Ships conducting Ballast Water Management in accordance with this Act shall discharge Ballast Water which contains:
 - (a) less than 10 viable organisms per cubic metre greater than or equal to 50 micrometres in minimum dimension;
 - (b) less than 10 viable organisms per millilitre less than 50 micrometres in minimum dimensions and greater than or equal to 10 micrometres in minimum dimension;
 - (c) less than the specified concentrations of indicator microbes described in sub-section 2.
2. Indicator microbes, as a human health standard, shall include:
 - (a) Toxicogenic *Vibrio cholerae* (O1 and O139) with less than 1 colony forming unit (cfu) per 100 millilitres or less than 1 cfu per gram (wet weight) zooplankton samples;
 - (b) *Escherichia coli* less than 250 cfu per 100 millilitres;
 - (c) Intestinal Enterococci less than 100 cfu per 100 millilitres.

Section B: Additional Measures and Warnings

- (1) In introducing additional measures in terms of Section 22 of the Act, the Authority shall:
 - (a) take into account the Guidelines developed by the Organisation;
 - (b) communicate the intention to establish such additional measure(s) to the Organisation at least 6 months, except in emergency or epidemic situations, prior to the projected date of implementation of the measures. Such communication should include:
 - i. the precise coordinates where the additional measure(s) is/are applicable;
 - ii. the need and reasoning for the application of the additional measure(s), including, where possible, benefits;
 - iii. a description of the additional measure(s); and
 - iv. any arrangements that may be provided to facilitate ships' compliance with the additional measure(s).
 - (c) endeavour to make available all appropriate services, which may include but are not limited to, notification to mariners of areas where such measures apply, available and alternative routes or ports, as far as practicable, in order to ease the burden on the ship;

- (d) to the extent required by customary international law as reflected in the United Nations Convention on the Law of the Sea, as appropriate, obtain the approval of the Organisation.
- (2) Warnings issued in terms of Section 23 of the Act should include:
- a) the precise coordinates of the area or areas; and,
 - b) where possible, the location of any alternative area or areas for the uptake of Ballast Water.
- (3) Warnings should be issued for areas:
- a) known to contain outbreaks, infestations, or populations of potentially harmful species (e.g., toxic/harmful algal blooms, invasive species and pathogens) which are likely to be of relevance to Ballast Water uptake or discharge;
 - b) near sewage outfalls;
 - c) where tidal flushing is poor or times during which a tidal stream is known to be more turbid;
 - d) near dredging operations; and
 - e) in or near sensitive coastal or estuarine areas.
- (4) The Authority shall also notify mariners, the Organization, and any potentially affected coastal States when a given warning is no longer applicable.

Section C: Survey and Certification Requirement for Ballast Water Management

C -1 Surveys

1. South African registered ships of 400 gross tonnage and above to which this Act applies, excluding floating platforms, FSUs and FPSOs, shall be subject to the surveys specified below:
 - (a) An initial survey before the ship is put into service or before the Certificate required under Sections 27, 28 or 29 of the Act is issued for the first time. This survey shall verify that the Ballast Water Management plan required by Section 12 of the Act and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Act;
 - (b) A renewal survey at intervals specified by the Authority, but not exceeding five years, except where Section C-5.2, C-5.5, C-5.6 or C-5.7 of this Schedule is applicable. This survey shall verify that the Ballast Water Management plan required by Section 12 and any associated structure, equipment, systems, fitting, arrangements and material or processes comply fully with the requirements of this Act;
 - (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 in paragraph 1.4. The intermediate surveys shall ensure that the equipment, associated systems and processes for Ballast Water Management fully comply with the applicable requirements of this Annexure and are in good working order. Such intermediate surveys shall be endorsed on the Certificate issued under Sections 27, 28 or 29 of the Act;

- (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 materials or processes associated with the Ballast Water Management plan required by Section 12 of the Act to ensure that they have been maintained in accordance with paragraph 9 and remain satisfactory for the service for which they are intended. Such annual surveys shall be endorsed on the Certificate issued under Sections 27, 28 or 29 of the Act;
- (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 this Act. 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 this Act. Such surveys shall be endorsed on the Certificate issued under Sections 27, 28 or 29 of the Act.
2. The Authority shall, within a year of the promulgation of this Act, establish appropriate measures for ships that are not subject to the provisions of sub-section 1 in order to ensure that the applicable provisions of the Act are complied with.
 3. Surveys of ships for the purpose of enforcement of the provisions of this Act shall be carried out by officers of the Authority. The Authority may, however, entrust the surveys either to surveyors nominated for the purpose or to recognised organisations.
 4. In nominating surveyors or recognising organisations to conduct the surveys described in sub-section 1, the Authority shall empower such nominated surveyors or recognised organisations to:
 - (a) require a ship that they survey to comply with the provisions of this Act; and
 - (b) carry out surveys and inspections if requested by the appropriate authorities of a port State that is a Party.
 5. The Authority shall notify the Organisation of the specific responsibilities and conditions of the authority delegated to the nominated surveyors or organisations for circulation to Parties for the information of their officers.
 6. When the Authority, a nominated surveyor or recognised organisation determines that a ship's Ballast Water Management does not conform to the particulars of the Certificate required under Sections 27, 28 or 29 of the Act is such that the ship is not fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources, such surveyor or organisation shall immediately ensure that corrective action is taken to bring the ship into compliance. A surveyor or organisation shall be notified immediately and it shall ensure that the Certificate is not issued or is withdrawn as appropriate. If the ship is in the port of another Party, the appropriate authorities of that State should be notified immediately.
 7. Where the Authority has been notified by the flag State that one of their ships visiting a South African port or offshore terminal is non-compliant, the Authority shall give any officer, surveyor or organisation nominated by that flag State any necessary assistance to carry out their obligations under the Convention, including any action described in Article 9 of the Convention.
 8. Whenever an accident occurs to a ship or a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Act, the owner, operator or other person in charge of the ship shall report at the earliest opportunity to the Authority, the recognised organisation or the nominated surveyor

- responsible for issuing the relevant Certificate, who shall cause investigations to be initiated to determine whether a survey as required by sub-section 1 is necessary. If the ship is in a port of another Party, the owner, operator or other person in charge shall also report immediately to the appropriate authorities of the port State and the nominated surveyor or recognised organisation shall verify that such report has been made.
9. In every case, the Authority shall fully guarantee the completeness and efficiency of the survey and shall undertake to ensure the necessary arrangements to satisfy this obligation.
 10. The condition of the ship and its equipment, systems and processes shall be maintained to conform with the provisions of this Act to ensure that the ship in all respects will remain fit to proceed to sea without presenting a threat of harm to the environment, human health, property or resources.
 11. After any survey of a ship under sub-section 1 has been completed, no change shall be made in the structure, any equipment, fittings, arrangements or materials associated with the Ballast Water Management plan required by regulation C-1 and covered by the survey without the sanction of the Authority, except the direct replacement of such equipment or fittings.

C-2 *Duration and Validity of the Certificate*

1. Certificates shall be issued for a period specified by the Authority that shall not exceed five years.
2. For renewal surveys:
 - (a) Notwithstanding the requirements of sub-section 1, when the renewal survey is completed within three months before the expiry 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) When 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.
 - (c) When the renewal survey is completed more than three months before the expiry 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. If a Certificate is issued for a period of less than five years, the Authority may extend the validity of the Certificate beyond the expiry date to the maximum period specified in sub-section 1, provided that the intermediate surveys referred to in Section C-1.1.3 are carried out as appropriate.
4. If 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 organisation authorised by the Authority 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. If a ship at the time when the Certificate expires is not in the port in which it is to be surveyed, the Authority may extend the period of validity of the Certificate only for the purpose of allowing the ship to complete its voyage to the port in which it is to be surveyed, and only in cases where it appears proper and reasonable to do so. No Certificate shall be extended for a period longer than three months, and a ship to which such an extension has been 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. 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.
6. A Certificate issued to a ship engaged on short voyages which has not been extended under the foregoing provisions of this regulation may be extended by the Authority for a period of grace of up to one month from the date of expiry stated on it. 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. In special circumstances, as determined by the Authority, a new Certificate need not be dated from the date of expiry of the existing Certificate as required by sub-sections 2.2, 5 or 6 of this Section. In these special circumstances, the new Certificate shall be valid to a date not exceeding five years from the date of completion of the renewal survey.
 8. If an annual survey is completed before the period specified in Section C-1, then:
 - (a) the Anniversary date shown on the Certificate shall be amended by endorsement to a date which shall not be more than three months later than the date on which the survey was completed;
 - (b) the subsequent annual or intermediate survey required by Section C-1 shall be completed at the intervals prescribed by that regulation using the new Anniversary date;
 - (c) the expiry date may remain unchanged provided one or more annual surveys, as appropriate, are carried out so that the maximum intervals between the surveys prescribed by Section C-1 are not exceeded.
 9. A Certificate issued under Sections 27, 28 or 29 of the Act shall cease to be valid in any of the following cases:
 - (a) if the structure, equipment, systems, fittings, arrangements and material necessary to comply with this Act is changed, replaced or significantly repaired and the Certificate is not endorsed in accordance with this Annexure;
 - (b) upon transfer of the ship to the flag of another State. A new Certificate shall only be issued when the Party issuing the new Certificate is fully satisfied that the ship is in compliance with the requirements of Section C-1. In the case of the transfer of a South African ship to another Party, the Authority shall, if requested within three months after the transfer, transmit to the new Administration copies of the Certificates carried by the ship before transfer and, if available, copies of the relevant survey reports;
 - (c) if the relevant surveys are not completed within the periods specified under Section C-1.1; or
 - (d) if the Certificate is not endorsed in accordance with Section C -1.1.

APPENDIX I

INTERNATIONAL BALLAST WATER MANAGEMENT CERTIFICATE

Issued under the provisions of the International Convention for the Control and Management of Ship's Ballast Water and Sediment (hereinafter referred to as "the Convention")/ Ballast Water Management Act (# of year?) under the authority of the Government of:

The Republic of South Africa by the South African Maritime Safety Authority (SAMSA).

Particulars of ship	
Name of ship	
Distinctive number or letters	
Port of registry	
Gross tonnage	
IMO number ³	
Date of construction	
Ballast Water Capacity (m ³)	

Details of Ballast Water Management Method(s) Used			
Date installed (if applicable)			
Name of manufacturer (if applicable)			
Principal Ballast Water Management Method(s) used on this ship	Method	Yes	No
	Ballast Water Exchange – in accordance with Regulation D-1 of the Annex to the Convention		
	Ballast Water Treatment – in accordance with Regulation D-2 of the Annex to the Convention		
	Prototype BWT – subject to regulation D-4 of the Annex to the Convention		

THIS IS TO CERTIFY:

1. That the ship has been surveyed in accordance with regulation E-1 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 untilsubject 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.....

Date of issue:.....

*Name and signature of authorised official
issuing the Certificate*

(Seal or stamp of SAMSA)

³ IMO Ship Identification Number Scheme adopted by the Organisation by resolution A.600(15).

ENDORSEMENT FOR ANNUAL AND INTERMEDIATE SURVEY(S)

THIS IS TO CERTIFY that during 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 authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

Annual/Intermediate survey*⁴: Signed:.....
(Signature of duly authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

Annual/Intermediate survey*⁴: Signed:.....
(Signature of duly authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

Annual survey: Signed:.....
(Signature of duly authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

⁴ * Delete as appropriate.

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

THIS IS TO CERTIFY that at an annual/intermediate*⁵ 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 authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

**ENDORSEMENT TO EXTEND THE CERTIFICATE IF VALID
FOR LESS THAN 5 YEARS WHERE REGULATION E-5.8.3 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 authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

**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 authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

⁵ * Delete as appropriate.

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 authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

ENDORSEMENT FOR ADVANCEMENT OF THE 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 authorised official)

Place:.....

Date:.....

(Seal or stamp of the authority as appropriate)

APPENDIX II**FORM OF BALLAST WATER RECORD BOOK****INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS BALLAST WATER AND SEDIMENTS**

Period from:..... To:.....

Particulars of ship		
Name of ship		
IMO number		
Gross tonnage		
Flag		
Total Ballast Water Capacity (m ³)		
Ballast Water Management plan	Yes	No

Diagram of ship indicating ballast tanks:

1. Introduction

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 to sea and to reception facilities.

2. Ballast Water and Ballast Water Management

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

3. Entries in the Ballast Water Record Book

Entries in the Ballast Water Record Book shall be made on each of the following occasions:

- 1.1 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.
- 1.2 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 officer in charge of the operation.

1.3 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 officer in charge of operation.

1.4 When Ballast Water is discharged to a reception facility

1. Date, time and location of uptake
2. Date, time and location of discharge
3. Name of 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 or uptake
6. Signature of officer in charge of operation.

1.5 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, loss, the reason therefore and general remarks
5. Whether the approved Ballast Water Management plan had been implemented prior to discharge
6. Signature of the officer in charge of the operation.

1.6 Additional operational procedure and general remarks

4. Volume of Ballast Water

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 recognised that the accuracy of estimating volumes of ballast is left to interpretation.

RECORD OF BALLAST WATER OPERATIONS

SAMPLE BALLAST WATER RECORD BOOK PAGE

Name of Ship:.....

Distinctive number or letters:.....

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

Signature of master.....

Date:.....

APPENDIX III

BALLAST WATER REPORTING FORM

1. SHIP INFORMATION

Vessel Name:	Type:	IMO Number:
Owner:	Gross Tonnage:	Call Sign:
	Arrival Date:	Agent:
Last Port and Country:		Arrival Port:
Next Port and Country:		

2. BALLAST WATER

Specify Units:
 Total Ballast Water on Board:
 Total Ballast Water Capacity:

3. BALLAST WATER TANKS Ballast Water Management Plan on board? ____ Management Plan Implemented?

Total number of ballast tanks on board: ____ No. of tanks in ballast: ____ IF NONE IN BALLAST GO TO No. 5.
 No. of tanks treated/exchanged: ____ No. of tanks not treated/exchanged: ____

4. BALLAST WATER HISTORY: RECORD ALL TANKS THAT WILL BE DEBALLASTED IN PORT STATE OF ARRIVAL; IF NONE GO TO No. 5.

Tanks/ Holds (List multiple sources per tank separately)	BALLAST WATER SOURCE				BALLAST WATER TREATMENT			BALLAST WATER DISCHARGE			
	DATE DDMMYY	Port or Lat/Long *	Volume (units)	Temp (units)	Salinity (units)	DATE DDMMYY	TREATMENT METHOD	DATE DDMMYY	Port or Lat/Long*	Volume (units)	Salinity (units)

Ballast Water Tank Codes: Forepeak = FP, Aftpeak = AP; Double Bottom = DB; Wing = WT; Topside = TS; Cargo Hold = CH; Other = O

IF NEITHER TREATMENT OR EXCHANGE WERE CONDUCTED, STATE OTHER CONTROL ACTION(S) TAKEN: _____
 IF NONE STATE REASON WHY NOT: _____

5: INTERNATIONAL CONVENTION FOR THE CONTROL AND MANAGEMENT OF SHIPS' BALLAST WATER AND SEDIMENTS, 2004 ON BOARD? _____

RESPONSIBLE OFFICER'S NAME AND TITLE (PRINTED) AND SIGNATURE: _____

*Fulfil with Port's name, preferably.

SCHEDULE 2**Laws Repealed or Amended**

No. & year of Act	Title	Extent of repeal or amendment
Ports Rules gazetted on 6 March, 2009 (GN no. 255)	Port Rules in terms of Section 80 (2) of the National Ports Act no 12 of 2005.	Chapter 2: Part C: Requirements for entering a port to be amended to include a requirement for submission of a Ballast Water Reporting form
		Chapter 4: Section 88 on Ballast Water to be amended in line with the Act.
		Chapter 4: Section 89 on Port Waste Reception Facilities (and related rules) to be amended to specifically include reference to ballast water and sediment reception facilities.

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