

Proposed Approach for Amending the Ballast Water Control and Management Regulations

Objective

In amending the Ballast Water Control and Management Regulations, Transport Canada (TC) seeks to further reduce the introduction and spread of aquatic invasive species by vessels and to give effect in Canada to the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (the Convention).

The purpose of this document is to provide information on a proposed TC approach to key elements of the amendments prior to the development of formal regulatory text. TC is working towards publication of the complete draft regulations in the Canada Gazette Part I for public comment in spring 2019.

Application

TC proposes to apply the regulations to domestic and foreign vessels, including those operating in the Great Lakes Basin (i.e. upstream of St. Lambert lock). TC would propose to not regulate a Great Lakes vessel of a non-party that transits through Canadian waters, provided that the vessel does not load or discharge ballast water in Canada.

More specifically:

1. The Regulations would apply in respect of the following vessels:
 - a. Canadian vessels everywhere, and
 - b. Vessels that are not Canadian vessels and are in waters under Canadian jurisdiction.
2. The Regulations would not apply in respect of the following vessels:
 - a. A vessel of a non-party to the Convention that operates exclusively in the Great Lakes Basin, provided that the vessel never loads or discharges ballast water in waters under Canadian jurisdiction;
 - b. A vessel that is owned and operated by a state and used only in government non-commercial service;
 - c. A vessel that is not designed or constructed to carry ballast water; and
 - d. A vessel that carries only permanent ballast water in sealed tanks such that it is not subject to release.

Compliance Timeline

TC proposes to phase-in the performance standard on the Convention timeline (i.e. the timeline of Regulation B-3, as adopted on April 13, 2018).

In the case of Great Lakes vessels, TC would propose to extend the compliance timeline to September 8, 2024. These vessels have been particularly delayed in selecting, piloting and installing ballast water management systems (BWMS) due to their frequent operations in the U.S. The U.S. has established differing requirements, and has only recently begun to type-approve BWMS.

TC also proposes to establish September 8, 2024 as the date for compliance by vessels that operate exclusively in waters under Canadian jurisdiction (or there and on the high seas).

More specifically:

3. a. A vessel constructed before September 8, 2017 that operates exclusively in waters under Canadian jurisdiction, the U.S. waters of the Great Lakes and St. Lawrence River, or in such waters and on the high seas, shall conduct ballast water management that at least meets the standard described in Regulation D-2 of the Convention no later than September 8, 2024.

- b. A vessel not subject to paragraph 3(a) shall comply with Regulation B-3 of the Convention.
- c. Paragraph 3(a) shall not apply to a ship that complies with Regulation B-3.6 (Reception Facilities) or B-3.7 (Alternative Methods) of the Convention.

Equivalent Compliance by Small Vessels

TC proposes that vessels less than 50 m in length operating only in Canada (or there and on the high seas) follow the IMO Guidelines for Ballast Water Management Equivalent Compliance (G3) (resolution MEPC.125(53), as may be amended). This is the same approach that certain international pleasure craft and search and rescue vessels will follow in accordance with Regulation A-5 of the Convention.

- 4. a. A vessel shall comply with Guidelines G3 if it is less than 50 m in overall length and:
 - i. operates exclusively in waters under Canadian jurisdiction;
 - ii. operates exclusively in waters under Canadian jurisdiction and on the high seas; or
 - iii. has a maximum ballast water capacity of 8 m³ and:
 - A. is a pleasure craft used solely for recreation or competition, or
 - B. is used primarily for search and rescue operations.
- b. For the purposes of interpreting Guidelines G3, “should” shall be read as “shall” and any recommendations are to be considered mandatory.

Performance Standard for Large Vessels

TC proposes to require that vessels not described in paragraph 4 discharge ballast water that complies with the Convention performance standard (i.e. Regulation D-2) according to the compliance timeline.

Notwithstanding, there is significant uncertainty in the ability of BWMS to consistently meet this standard when treating challenging water drawn from the Great Lakes and St. Lawrence River (i.e. upstream of Anticosti Island). Therefore, when treating this water, TC proposes to deem vessels to be in compliance with the performance standard, provided that certain conditions are met (see paragraph 5, below).

On the assumption that the performance of BWMS technology would become more clear with time, the approach of deeming compliance would be restricted to vessels that fit a BWMS prior to September 8, 2024. Should experience demonstrate ongoing challenges in treating ballast water in this region, this date could be reconsidered at a future date.

More specifically:

- 5. A vessel conducting Ballast Water Management to meet the standard in Regulation D-2 of the Convention using a ballast water management system installed prior to September 8, 2024 shall be deemed to have met this standard in respect of ballast water loaded on the Great Lakes and St. Lawrence River if:
 - a. the vessel follows its approved ballast water management plan and carries a valid International Ballast Water Management Certificate or equivalent;
 - b. the ballast water management system is in working order and has been maintained in accordance with the manufacturer’s instructions; and
 - c. the ballast water is managed in accordance with the BWMS manufacturer’s instructions, subject to any “limiting operating conditions” and “other restrictions” identified on the type approval certificate issued pursuant to the BWMS Code.

Ballast Water Exchange Plus Treatment

In addition to compliance with the Convention, TC proposes to require vessels travelling to Canadian freshwater ports from outside the exclusive economic zone to continue performing ballast water exchange until September 8, 2024. This would provide time for scientific research to determine if BWMS are performing well. Should experience demonstrate ongoing challenges in treating ballast water in these ports, the requirement to continue doing exchange could be reconsidered (i.e. in time, or in geographic area) at a future date. TC proposes to continue saltwater flushing requirements as well.

The following ports are Canadian freshwater ports: Kitimat, Stewart, Fraser River ports, Saguenay River ports, St. Lawrence River ports upstream of Ile d'Orleans, and ports in the Great Lakes Basin.

More specifically:

6. a. This paragraph applies to a vessel that enters a Canadian freshwater port prior to September 8, 2024 after operating outside waters under Canadian jurisdiction.
- b. A vessel conducting Ballast Water Management to meet the standard in Regulation D-2 of the Convention shall first conduct ballast water exchange in accordance with Regulations D-1 and B-4 of the Convention (and saltwater flushing of empty ballast water tanks).

Non-Party Vessels

The Convention requires Canada to apply the requirements of the Convention to vessels of non-parties to ensure that no more favourable treatment is given to such vessels. The Convention's requirements include the development of approved ballast water management plans for meeting the Convention's performance standard wherever ballast water is discharged—even if the ballast is ultimately discharged into waters of non-parties. TC therefore proposes to require vessels that load or discharge ballast water in Canada to carry a document issued by, or on behalf of, their Administration establishing that ballast water planning and management onboard the ship is equivalent to that required by the Convention.

More specifically:

7. A vessel of a non-party to the Convention shall not load or discharge ballast water in waters under Canadian jurisdiction unless a document is issued by, or on behalf of, the government of the State under whose authority the vessel is operating that certifies:
 - a. that the ship has been surveyed in accordance with Regulation E-1 of the Convention; and
 - b. that the survey shows that ballast water management on the ship complies with the annex to the Convention.

Exemptions under Regulation A-4

Although the Convention allows for time-limited, renewable, risk-based exemptions under Regulation A-4, Transport Canada does not anticipate that it would grant significant numbers of exemptions. TC will develop guidelines for applicants, and envisions that applications would be reviewed in conjunction with Fisheries and Oceans Canada. The applicant would need to obtain the support of other affected jurisdictions. TC is exploring options to cost-recover the consideration and administration of exemptions.

More specifically:

8. On application by the authorized representative of a vessel in the form and manner specified by the Minister, the Minister may grant exemptions to the requirements of Regulation B-3 and C-1 of the Convention (and the requirements of paragraph 3, above) if the application establishes that:
 - a. the conditions of Regulation A-4 of the Convention are met; and

- b. the exemption is in the public interest.

Same Location Exception

The Convention does not require management of ballast water loaded and discharged at the same location, providing that no mixing with unmanaged ballast water has occurred (see Regulation A-3.5). TC intends to align with the U.S. Environmental Protection Agency's current requirement. This definition would encompass short-distance ferry routes, as well as the operation of support vessels within many Canadian ports.

More specifically:

- 9. "Same location" means within 10 nautical miles and without crossing a physical barrier or obstruction (e.g. lock).