

Documents tabled on 13 June 2007:

National Interest Analysis [2007] ATNIA 22

with attachment on consultation

**International Convention for the Control and Management
of Ships' Ballast Water and Sediments
(London, 13 February 2004)
[2005] ATNIF 18**

Regulation Impact Statement 2007

Background information:

Current Status List of Parties

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

International Convention for the Control and Management of Ships' Ballast Water and Sediments (London, 13 February 2004) [2005] ATNIF 18

Nature and timing of proposed treaty action

1. The proposed treaty action is ratification of the *International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004* (the Convention). The Convention was adopted by the International Maritime Organization (IMO) on 13 February 2004. Australia signed the Convention, subject to ratification, on 27 May 2005.
2. The treaty action will take place on the date on which Australia ratifies the Convention. This will occur once implementing legislation has been passed by the Australian Parliament, all State and the Northern Territory parliaments.
3. The Convention is currently not generally in force. It will enter into force twelve (12) months after the date on which not less than thirty (30) States, the combined merchant fleets of which constitute not less than thirty-five (35) per cent of gross tonnage of the world's merchant fleet have ratified the Convention (Article 18(1)). As at 6 April 2007, eight member countries had ratified the Convention, accounting for just over three per cent of the world's merchant shipping by gross tonnage.

Overview and national interest summary

4. Directly and indirectly, invasive species can harm commercial fisheries, the tourism industry, the amenity and non-use values of marine environments and ecosystems, human health and the commercial efficiency of ports and associated infrastructure. Once established, marine pests often have lasting impacts, and are costly, difficult or impossible to eradicate or manage.
5. Ballast water taken on board a ship is used to control the trim, list, draught, stability and stresses of a ship and is essential to the safe and efficient operation of modern shipping. However, it is also recognised as a major vector for spreading harmful aquatic organisms and pathogens around the world. The Convention requires Parties to take measures to prevent the spread of harmful aquatic organisms carried by ships' ballast water, including by:
 - developing national policies, strategies or programmes for ballast water management in the ports and waters under their jurisdiction, and
 - ensuring that all ships flying their flag comply with the requirements of the Convention, including by implementing a Ballast Water and Sediments Management Plan, carrying a Ballast Water Record Book and carrying out ballast water management procedures.
6. With expanding international maritime trade, it is in Australia's interest to implement more uniform and stringent requirements to prevent and manage the increased risk of introducing marine pests into Australian waters from ships provided for under the Convention. Failure to ratify the Convention would be a significant set-back in the work Australia has done to date to manage invasive marine pests. In addition, the benefits of preventing further incursions of harmful aquatic organisms and pathogens (and the costs of incursions) via ballast water could exceed \$30 million a year.

Reasons for Australia to take the proposed treaty action

Preventing the further spread of marine pests

7. Each year, around 200 million tonnes of ships' ballast water is discharged into Australian ports by 13 000 ship visits from some 600 overseas ports. Marine pests have already been introduced into Australian waters through ships' ballast water. Scientists have identified more than 250 introduced marine species in Australian waters, at least 12 of which have been categorised as environmental or economic pests of concern.

8. To combat this problem, the *Quarantine Act 1908* has required all ships arriving from overseas to comply with mandatory ballast water management arrangements since July 2001. These arrangements are currently consistent with the Convention but only protect Australia from the introduction of marine pests from ships entering Australian waters. Similar arrangements are required to prevent the spread of marine pests in Australian waters from ships travelling between Australian ports that discharge ballast water taken up in Australian waters. In ratifying the Convention, Australia would be continuing its efforts to combat the spread of marine pests domestically, and through a co-operative system of international standards.

International obligations

9. IMO member countries developed this Convention in order to combat the limitations of the current guidelines on the management of ballast water, the current lack of a totally effective solution to the ballast water problem, and the serious threats posed by invasive marine species. Australia has been a member of the IMO since 1952, and has played a leading role in the development of this Convention. By becoming a party to the Convention, Australia will be able to enforce the full range of controls for the management of ships' ballast water and sediments on foreign and Australian flagged vessels on international voyages. This will also ensure that Australia's requirements are consistent with those of other countries.

10. Ratification of the Convention by Australia would be regarded positively by other IMO-member States, and would heighten Australia's reputation as a world leader on environmental issues. It is strongly in Australia's interests that as many IMO-member states as possible adopt the Convention so that Australia is no longer one of the few member states with pre-border ballast water controls. International consistency in managing ballast water will provide clarity for the shipping industry, reduce the likelihood that requirements might not be met and, as a consequence, reduce costs for the shipping industry and Australia in monitoring compliance with the Convention.

11. This action is also in accordance with Australia's general obligations as a Party to the *United Nations Convention on the Law of the Sea 1982* (UNCLOS), Article 196(1) of which requires nations to take all measures consistent with the Convention that are necessary to prevent, reduce and control the intentional or accidental introduction of species, alien or new, to a particular part of the marine environment which may cause significant and harmful changes to that environment.

Obligations

12. The Convention is divided into general obligations in the Articles of the Convention, and specific requirements in Regulations contained in the Annex, which set technical standards and other parameters for the management of ships' ballast water and sediments.

General obligations

13. Parties must give effect to the provisions of the Convention and encourage the continued development of ballast water management plans in order to prevent, minimize and ultimately eliminate the transfer of harmful aquatic organisms and pathogens through the control and management of ships' ballast water and sediments (Article 2(1) and (5)). Parties may take more stringent measures with respect to this obligation, in a manner consistent with international law (Article 2(3)). Parties must ensure that ballast water management practices do not cause greater harm than they prevent to their environment, human health, property or resources, or those of other States (Article 2(6)).

14. The Convention also requires Parties to

- take effective measures to ensure that ships flying their flag comply with the requirements of the Convention, including the Regulations, and develop national policies, strategies or programmes for ballast water management in their waters (Article 4)
- ensure that ports and terminals where cleaning or repair of ballast tanks occurs provide adequate facilities for the reception of ballast water sediments (Article 5)
- promote, facilitate and share with other Parties the results of scientific and technical research on ballast water management, and monitor the effects of ballast water management on waters in their jurisdiction (Article 6), and
- survey and certify ships flying their flag in accordance with the Regulations (Article 7).

15. Parties are required to co-operate to detect violations and enforce the provisions of the Convention (Article 10). This includes a requirement to prohibit and establish sanctions under domestic law for violations of the Convention, and to take action, or provide relevant information and evidence to other Parties, in relation to alleged violations. A Party's laws must prohibit both violations committed by ships entitled to fly their flag, or operating under their authority, wherever the violation occurs (Article 8(1)), and violations committed within their jurisdiction by any ship covered by the Convention (Article 8(2)). Sanctions are to be of adequate severity to discourage violations of the Convention wherever they occur.

Regulations

16. The Regulations establish Ballast Water Management and Control Requirements, and Standards for Ballast Water Management that must be met in implementing the Requirements. Subject to entry into force of the Convention, and commencing from a date determined according to the ballast water capacity and date of vessel construction, ships covered by the Convention will only be permitted to discharge ballast water in accordance with the provisions of the Annex (Regulation A-2), except where expressly provided otherwise.

17. The Ballast Water Management and Control Requirements oblige ships to have an approved Ballast Water Management Plan (Regulation B-1) and to maintain a Ballast Water Record Book (Regulation B-2) to record when ballast water is taken on board, circulated or treated for Ballast Water Management purposes, and discharged into the sea. Ships may only conduct ballast water exchange in specified areas (Regulation B-4). Ships are required to be surveyed (Regulation E-1) and certified (Regulation E-2) and may be inspected by port State control officers who can verify that the ship has a valid certificate, inspect the Ballast Water Record Book, and sample the ballast water.

18. Under the Standards for Ballast Water Management, until 2009, all ships to which the Convention applies will be required to conduct at least 95 per cent volumetric exchange of their ballast water in specified locations (Regulation D-1), or to treat ballast water on-board to a prescribed performance standard using an approved system (Regulation D-2). Commencing between 2009 and 2016 (depending on the ballast water capacity and date of vessel construction), ships will have to treat ballast water on-board in accordance with the prescribed performance standard in Regulation D2. All ships shall also remove and dispose of sediments in accordance with the provisions of the Ballast Water Management Plan (Regulation B-1).

19. The obligations will apply to all ships entitled to fly the flag of a party to the Convention, as well as to ships not entitled to fly the flag of a Party but which operate under the authority of a Party. The obligations do not apply to ships not designed or constructed to carry ballast water, ships with permanent ballast water in sealed tanks that are not subject to discharge, and any military or other ship used for governmental non-commercial service.

Implementation

20. The Convention will be implemented through Commonwealth, State and Northern Territory legislation, and jurisdictions are considering the legislative models that would best give full effect to the Convention within Australia. In relation to ships arriving from overseas, the requirements under the Convention will, in the first instance, be similar to those that have been in place for internationally sourced ballast water since 1 July 2001 under the *Quarantine Act 1908*.

21. An Australian Ballast Water Management Unit will be established within the Department of Agriculture, Fisheries and Forestry to provide a single point of contact for industry. The Unit will track and monitor ships around Australia, provide advice to the shipping industry and jurisdictions on ballast water management arrangements, and manage the risk profiling, targeting and coordination of the compliance inspections. A phase-in transitional period with voluntary compliance will be introduced prior to mandatory requirements commencing. The existing mandatory requirements in other Australian Government legislation and Victorian State Government legislation will continue to apply through this transition period.

22. Following passage of all of the proposed legislation by the Australian Parliament and State and Northern Territory parliaments, Australia will ratify the Convention by depositing an instrument of ratification with the Secretary-General of the IMO. Until ratification of the Convention has been effected, Australia is not bound by the treaty, however, as a signatory, Australia has undertaken to refrain from actions which would defeat the object and purpose of the treaty.

Costs

23. In the period from 2007 to 2008, the cost of the regulation will be the costs of exchanging high-risk ballast water at sea and these will vary according to the management option implemented. During the transitional period between 2009 and 2016, the costs of the regulation will be a function of the proportion of ships still using the ballast water exchange procedures and the proportion of ships using on-board treatment. From 2016, the cost of regulation will be the cost of implementing the permanent on-board ballast treatment facilities on all ships.

24. The costs incurred by government in implementing the ballast water management arrangements arising from the obligations of the Convention will be recovered from the shipping industry via a uniform shipping levy to be applied to all ships on a quarterly basis.

25. The provision of services for implementation of the mandatory elements of the Ballast Water Management Arrangements (domestic ballast water inspections and single point of contact for the shipping industry) is expected to cost in the order of \$800,000 per annum (in addition to current costs of international ballast water management arrangements of \$1.5 million per annum). Apart from levy costs, the direct costs to the shipping industry from implementing the requirements are expected to be approximately \$5.3 million per annum.

Regulation Impact Statement

26. A Regulation Impact Statement is attached. The Regulation Impact Statement has been approved by the Office of Best Practice Regulation.

Future treaty action

27. Amendments to the Convention may be proposed by any Party, and considered and adopted in an IMO Committee by a two-thirds majority of the Parties present and voting, on condition that at least one-third of the Parties are present at the time of voting. Alternatively, if there is a request by at least one-third of the Parties, the IMO must convene a conference to consider amendments to the Convention. An amendment to an article of the Convention will be deemed to be accepted when two-thirds of the Parties have notified their acceptance of it. An amendment to the Annex will be deemed to be accepted 12 months after the date of adoption, or at a date determined by the Committee. However, if more than one-third of the Parties give notice of their objection to the amendment to the Annex, it will be deemed not to have been accepted.

28. An amendment shall enter into force six months after its acceptance for all Parties except for any Party that has notified its objections to the amendment.

29. All amendments would be subject to the Australian treaty process, including tabling and consideration by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

30. Article 20 of the Convention provides that any Party may denounce the Convention by written notification to the IMO at any time after two years from the date on which the Convention enters into force for that Party. Denunciation takes effect one year after receipt or such longer as may be specified in the notification. Denunciation would also be subject to the Australian treaty process.

Contact details

Australian Biosecurity Task Force
Corporate Policy Division
Department of Agriculture Forestry and Fisheries.

**International Convention for the Control and Management
of Ships' Ballast Water and Sediments
(London, 13 February 2004)
2005 ATNIF 18**

CONSULTATION

1. The IMO's Marine Environment Protection Committee (MEPC), together with the Maritime Safety Committee (MSC) and technical sub-committees, have been dealing with the problem of harmful aquatic organisms in ballast water since it was first raised at IMO in 1988. Australia was represented at all meetings of the MEPC and consulted with stakeholders at all stages of the development process including: during consideration of new proposals for the new convention (Stage 1); preparing briefings on the final text (Stage 2); and seeking the views of stakeholders on Australia's possible adoption of the Convention (Stage 3).

2. The main parties affected by the proposed legislation will be the shipping industry. The Australian Shipowners Association, Shipping Australia, the Minerals Council of Australia, the National Bulk Commodities Group and the Association of Australian Ports and Marine Authorities, have provided input and briefing on a number of issues for the IMO Committee meetings and fully support the implementation of the Convention,

3. In addition, extensive consultations were undertaken with other federal, state and Northern Territory government departments, IMO Member States and Non-Government Organisations. The treaty has also been included on the twice yearly schedules of the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) since 2000. The schedules allow the States and Territories to seek further information at the twice yearly meetings; however no State or Territory has sought further information from this committee.

The following table provides further details on these consultations.

Organisation or Company	Timing	Form	Contributions and feedback
Stakeholder committees			
Standing Committee on Conservation and the Standing Committee on Fisheries and Aquaculture National Taskforce on the Prevention and Management of Marine Pest Incursions (Commonwealth/States/NT, shipping and port industry sectors, fishing, conservation interests)	Stages 1-3 (prior to 16 October 2000)	Meetings Written correspondence	Information and consultation

The High Level Officials Working Group (Senior government and industry representatives).	Stages 1-3 (prior to August 2003)	Meetings Written correspondence	Information and consultation
National Introduced Marine Pest Group (Commonwealth/States/NT, shipping and port industry sectors, fishing, conservation interests)	Stages 1-3 (since 16 October 2000)	Meetings Written correspondence	Information and consultation. Agreed to proceed with the processes necessary for Australia to ratify the Convention.
Industry Associations			
Shipping Australia	Stages 1-3	Meetings Written correspondence	Support development and ratification of Convention.
Australian Ship Owners Association	Stages 1-3	Meetings Written correspondence	Technical comments provided. Support development and ratification of Convention. Briefings for 2004 IMO Diplomatic Conference.
Minerals Council of Australia	Stages 1-3	Meetings Written correspondence	Support development and ratification of Convention.
Association of Australian Ports and Marine Authorities	Stages 1-3	Meetings Written correspondence	Support development and ratification of Convention.
National Bulk Commodities Group	Stages 1-3	Meetings Written correspondence	Support development and ratification of Convention.
Government			
Department of Foreign Affairs and Trade	Stages 1-3	Written correspondence	Technical comments provided.
Attorney-General's Department (Office of International Law)	Stages 1-3	Written correspondence	Technical comments provided Briefings for 2004 IMO Diplomatic Conference.
Commonwealth Ministers	Stages 1-3	Letter to relevant Ministers advising of Diplomatic Conference	Approval being sought from the Minister for Fisheries, Forestry and Conservation (May 2007).

State/Northern Territory Transport Ministers	Stages 1-3	Letter to Ministers advising of Diplomatic Conference	Handled through Natural Resource Management and State/Territory consultation forums.
Australian Maritime Group (Commonwealth/States/NT)	Stages 1-3	Paper seeking support for signing subject to ratification.	Agreed to commence the process to ratify the Convention (February 2007).
Standing Committee on Transport (Commonwealth/States/NT)	Stages 1-3	Paper seeking support for signing subject to ratification.	Agree to commence the process to ratify the Convention (March 2007).
Australian Transport Council (Commonwealth/States/NT)	Stages 1-3	Paper seeking support for signing subject to ratification.	Agreement sought to commence the process to ratify the Convention (April 2007).
Marine and Coastal Committee (Commonwealth/States/NT)	Stages 1-3	Paper seeking support for Australian adoption	Agreed the Commonwealth will ratify the Convention, following completion of the necessary steps for ratification (February 2007).
Natural Resource Management Standing Committee (Commonwealth/States/NT)	Stages 1-3	Paper seeking support for Australian adoption	Agreed the Commonwealth will ratify the Convention, following completion of the necessary steps for ratification (March 2007).
Natural Resource Management Ministerial Council (Commonwealth/States/NT)	Stages 1-3	Paper seeking support for Australian adoption	Agreed the Commonwealth will ratify the Convention, following completion of the necessary steps for ratification. NSW had reservations about this recommendation (April 2007).

**STATUS OF INTERNATIONAL CONVENTION FOR THE CONTROL
AND MANAGEMENT OF SHIPS' BALLAST WATER
(LONDON, 13 FEBRUARY 2004)**

(as at 6 April 2007)

Conditions of entry into force: 30 States, 35% of the World's tonnage

Countries ratified: 8

Date of entry into force: Not yet in force

Percentage of World's tonnage: 3.21%

State	Deposit date
Kiribati	5 February 2007
Maldives	22 June 2005
Nigeria	13 October 2005
Norway	29 March 2007
Saint Kitts and Nevis	30 August 2005
Spain	14 September 2005
Syria	2 September 2005
Tuvalu	2 December 2005