
ANNEX 12

**RESOLUTION MEPC.290(71)
(adopted on 7 July 2017)**

THE EXPERIENCE-BUILDING PHASE ASSOCIATED WITH THE BWM CONVENTION

THE MARINE ENVIRONMENT PROTECTION COMMITTEE,

RECALLING Articles 38(a) and 38(b) of the Convention on the International Maritime Organization concerning the functions of the Marine Environment Protection Committee conferred upon it by international conventions for the prevention and control of marine pollution from ships, and its functions for considering appropriate measures to facilitate the enforcement of such conventions,

RECALLING ALSO that the International Conference on Ballast Water Management for Ships held in February 2004 adopted the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (the Convention),

CONSIDERING that the entry into force of the Convention on 8 September 2017 will represent the beginning of global ballast water management, and that challenges may arise during the implementation of any new convention that were not foreseen at the time of its adoption,

RECOGNIZING the concerns of the shipping industry regarding the potential penalization of shipowners and operators during the implementation of the Convention due to non-compliance with the performance standard of the Convention for reasons beyond the control of the shipowner and ship's crew, as well as the need to protect the environment, human health, property and resources from the discharge of harmful aquatic organisms and pathogens in any non-compliant ballast water,

DETERMINED to monitor the implementation of the Convention so as to identify aspects of the implementation that are working well and to shed light on issues that require further attention,

PREFERRING to develop most improvements to the Convention as a package, following a systematic and evidence-based approach, and informed by experience gained during the implementation of the Convention,

1 AGREES to establish an experience-building phase associated with the Convention (ballast water experience-building phase), as set out in the annex to this resolution;

2 URGES port States, flag States and other stakeholders to gather, prepare and submit data to the ballast water experience-building phase, taking into account the *Guidelines for port State control under the BWM Convention* (resolution MEPC.252(67)), *Guidance on ballast water sampling and analysis for trial use in accordance with the BWM Convention and Guidelines (G2)* (BWM.2/Circ.42/Rev.1) and the survey guidelines under the Convention;

3 RESOLVES to undertake an analysis of the data gathered and a systematic and evidence-based review of the text of the Convention and develop a package of amendments to the Convention as appropriate;

4 AGREES that, during the ballast water experience-building phase, a ship should not be penalized (sanctioned, warned, detained or excluded) solely due to an exceedance of the ballast water performance standard described in regulation D-2 of the Convention following use of a ballast water management system (BWMS), provided that:

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- .1 the BWMS is approved in accordance with regulation D-3.1;
- .2 the BWMS has been installed correctly;
- .3 the BWMS has been maintained in accordance with the manufacturer's instructions;
- .4 the Ballast Water Management Plan approved in accordance with regulation B-1 of the Convention has been followed, including the operational instructions and the manufacturer's specifications for the BWMS; and
- .5 either the self-monitoring system of the BWMS indicates that the treatment process is working properly, or the port State has been advised that the BWMS is defective prior to the discharge of any ballast water;

5 FURTHER AGREES that the measures in paragraph 4 above do not pertain to other actions of the port State pursuant to Articles 9.3 and 10.3 of the Convention concerning protection of the environment, human health, property and resources;

6 RECOMMENDS that the port State, flag State and shipowner should take into account any guidelines developed by the Organization on contingency measures in determining the most appropriate solution to allow for the discharge of non-compliant ballast water.

ANNEX

STRUCTURE OF THE EXPERIENCE-BUILDING PHASE ASSOCIATED WITH THE BWM CONVENTION

Introduction

1 The entry into force of the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (the Convention) will represent the beginning of global ballast water management. As challenges can be expected with any new global approach, there may be a need for improvements to the Convention in light of experience gained, in accordance with article 2.5 of the Convention (concerning the continued development of ballast water management and standards).

2 The purpose of the ballast water experience-building phase (EBP) is to allow the Marine Environment Protection Committee (the Committee) to monitor the implementation of the Convention. The EBP includes data gathering and analysis to allow the Committee to identify aspects of the Convention's implementation that are working well and to shed light on issues that require further attention. The EBP also includes a systematic and evidence-based process for reviewing and improving the Convention.

3 The EBP is intended to permit port States, flag States and stakeholders (e.g. owners and operators of ships, manufacturers of BWMS, and recognized organizations) to:

- .1 gather and submit data concerning the implementation of the Convention;
- .2 participate in the analysis of this data in the Ballast Water Review Group (BWRG) of the Committee; and
- .3 undertake a review of the text of the Convention to identify any areas where the evidence demonstrates a need for improvement of the Convention, and then develop a package of priority amendments.

4 To this end, the EBP is structured as three stages: a data gathering stage, a data analysis stage, and a Convention review stage (see figure 1). The EBP begins with the entry into force of the Convention and ends with the entry into force of the package of priority amendments. A specific timeline for the stages of the EBP will be included within a data gathering and analysis plan for the ballast water experience-building phase (DGAP) setting out the concrete approach to gathering and analysing data during the EBP.

5 The scope for the EBP is the Convention regime as a whole. The EBP includes, and is broader than, the more specific "trial period" associated with methods for sampling and analysing ballast water during port State control (PSC)¹. The arrangements for the trial period have been updated and incorporated within the EBP, and data associated with the trial period will be gathered and analysed in parallel with data concerning other aspects of the Convention.

¹ See document BLG 17/18, annex 6, *Recommendations related to the trial period for reviewing, improving and standardizing the Guidance for ballast water sampling and analysis for trial use in accordance with the BWM Convention and Guidelines (G2)*. These recommendations were agreed in principle by MEPC 65.

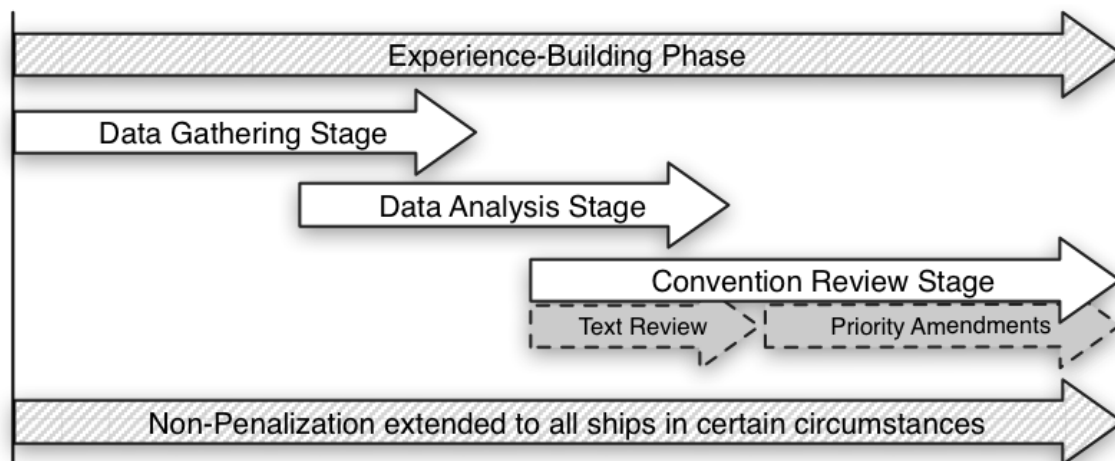


Figure 1: Stages of the ballast water experience-building phase and non-penalization

Non-penalization

6 By way of the resolution adopting the EBP, the Committee has adopted certain non-penalization measures that will be in place during the EBP. These measures are intended to recognize and address concerns expressed by the shipping industry regarding the potential penalization of shipowners and operators during the implementation of the Convention due to non-compliance with the ballast water performance standard described in regulation D-2 of the Convention despite the use of a proper ballast water management system (BWMS). The measures also recognize the need to protect the environment, human health, property and resources in port States from the discharge of non-compliant ballast water.

7 Ships should carry documents on board demonstrating that the preconditions associated with the non-penalization measures have been met (e.g. relating to approval, installation and maintenance of the BWMS). The crew should adhere to the operational instructions and manufacturer's specifications of the BWMS (which should be carried on board). The crew should also attend to the self-monitoring system of the BWMS.

8 This temporary non-penalization that is specific to the EBP has no bearing on other decisions of the Committee concerning other non-penalization arrangements.

9 Aside from this non-penalization, the EBP does not alter the basic roles, responsibilities, obligations and recommendations under the Convention, its guidelines and other guidance.

Data gathering

10 Data gathering is intended to ensure that the Committee has adequate information on the implementation of the Convention. The specific information to be collected is to be set out in the DGAP. The DGAP is intended as a living document and may be revised as appropriate by the Committee during the EBP.

11 Member States are encouraged to participate fully in the EBP in order to maximize the information available to the Committee. EBP data will be gathered from Member States voluntarily through four interfaces: basic interface reports (on data generally collected by port and flag States), supplementary interface reports (on specific topics that might be provided by a limited number of States), trial period interface reports (on methods for sampling and analysis for port State control) and stakeholder reports (e.g. from shipowners, BWMS manufacturers

and classification societies). For practical reasons, stakeholders are invited to provide their voluntary submission to a relevant Member State for aggregation and submission to the stakeholder interface.

12 In order to ensure data quality, the DGAP will include common data templates associated with each interface. These templates will request mainly numerical or categorical data that can be easily combined for global reporting. The submissions will be reports (rather than raw data) from Member States so as to manage the volume of information. In cases where different approaches to data collection by States could significantly affect the comparability of reports, States will be requested to identify the approach used to collect the data.

13 Commercial sensitivities will be protected through the use of aggregate reporting by port States and flag States. The EBP does not require ships or shipowners to be identified in data submissions.

Data analysis

14 The data analysis is intended to ensure that the globally aggregated EBP data is processed to yield useful and timely information and insight into the implementation of the Convention. This information should include matters such as the pace and progress of implementing the Convention, degree to which the standards of the Convention and its other requirements are achieved, unforeseen safety or environmental hazards, etc.

15 The analysis report will be developed once the data gathering stage has concluded. The analysis report will be based primarily on the results of the data gathering stage. The terms of reference for the report will be approved by the Committee in order to focus the analysis and identify any appropriate additional data sources and/or questions. A draft of the analysis report should be provided to the Committee for consideration and comment by its Ballast Water Review Group (BWRG) prior to its completion.

Convention review

16 As the entry into force of the Convention on 8 September 2017 will represent the beginning of global ballast water management, challenges may arise that were not envisioned when the Convention was adopted in 2004. In accordance with Article 2.5 of the Convention (concerning the continued development of ballast water management and standards) there may be a need to amend the Convention in the light of experience gained.

17 The purpose of the Convention review, therefore, is to take a systematic and evidence-based approach to the development of a package of amendments to the Convention for recommendation by the Committee to the Parties. Basing the review on the data gathering and final analysis report developed earlier in the EBP will ensure that amendments to the Convention are developed holistically through an objective, transparent and inclusive approach.

18 The Convention review stage should be undertaken by the Committee with the support of its BWRG, and should consist of two sequential steps:

- .1 a textual review of the Convention as a whole to develop an evidence-based list of issues with the Convention, highlighting those priority issues that need to be addressed before the end of the EBP (and its associated non-penalization arrangements). Guidelines and guidance developed by the Committee in connection with the Convention may be included in the Convention review if warranted based on the data analysis; and

- .2 the development of a package of amendments to the Convention to address the priority issues (amendments to address other issues identified during the textual review may then be developed after the end of the EBP.)

19 In reviewing the Convention, the Committee intends to give due consideration to matters such as the policy goals of the Convention, any challenges identified in its implementation and the considerations outlined in regulation D-5 of the Convention.

20 It is recommended that most amendments to the Convention be developed through the EBP as it provides a systematic and evidence-based approach to improving the Convention. That said, the EBP does not prevent any Party from proposing amendments independently at any time in accordance with article 19 of the Convention.
