

## HELCOM/OSPAR TG BALLAST

### ECSA/INTERFERRY COMMENTS PAPER ON BWMC EXEMPTIONS

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#### Introduction

The 2004 IMO Ballast Water Management Convention (BWMC) allows for administrations to grant exemptions under regulation A4, complemented by the G7 Guidelines. Additionally, the Contracting Parties to HELCOM (the Baltic Sea) and OSPAR (NE Atlantic; North Sea/English Channel) have issued Guidelines expanding primarily on the methodology for risk assessment. Whereas there is merit in clarifying the IMO Guidelines in order to achieve consistency between the administrations, the HELCOM/OSPAR Guidelines are very onerous for an applicant of an exemption. To this end, the Danish Environment Ministry recently issued a report<sup>1</sup> outlining various transitional measures.

We welcome the initiative of the Danish Environment Ministry to outline various transitional measures and suggest for relaxation of exemption procedures till the full implementation of the Convention. This approach will provide the ship operators a maximum period of 7 years that may enable them either to renew their fleet or to consider other compliance options. However, it is essential that the proposed relaxation are accepted by the National Authorities and will not last only till the full implementation of the BWMC, but be incorporated on the final HELCOM/OSPAR Guidelines. Consequently, amendment to the BWMC should also be considered.

#### Appendices:

- **Annex 1** - Background and Key issues
- **Annex 2** - Danish Environment Ministry Report: key findings summary

#### General comments on the proposed transitional options

<i>Option</i>	<i>Key parameters</i>	<i>Priority</i>
<b>A</b>	Ships operating only Port A-B, with <1500 m <sup>3</sup> BW capacity and built <b>from</b> 2009 may use BW exchange until 2022 D2 in HELCOM+OSPAR area	<b>High</b>
<b>B</b>	Ships >5000m <sup>3</sup>	Out of scope
<b>C</b>	Ships operating only Port A-B with <1500 m <sup>3</sup> BW capacity and built <b>before</b> 2009 may use BW exchange until D2 2022 <sup>2</sup> in HELCOM+OSPAR	<b>High</b>

<sup>1</sup> 'Ballast Water Management Convention transition phase for local shipping in the Baltic Sea and the North Sea', Danish Ministry of the Environment – Nature Agency, Report 2013.

<sup>2</sup> 'D2 2022' means that until all trans-ocean ships meet the D2 standard, which is assumed to be by 2022, intra-regional ships may be allowed to stay at the less onerous D1 standard (ballast water exchange).

<b>D</b>	Reduced requirements on exempted ship for e.g. dry-dock visits	Medium
<b>E</b>	Use of drinking water for temporary deviation	Medium
<b>F</b>	Data from an initial port survey are valid until D2 is enforced	Medium
<b>G</b>	Temporary expansion of the one-kilometre criteria	No view
<b>H</b>	Use of low- and high-risk areas (i.e. biogeographic regions)	Very high
<b>I</b>	Discharge threshold approach (exchange for small capacity ships until D2 is enforced)	High, linked to 'H'
<b>J</b>	Ballast water threshold in relation to port type	Medium, linked to 'H'
<b>K</b>	History of shipping – old routes = low risk	Low
<b>L</b>	Use of drinking water for infrequent discharge	Out of scope
<b>M</b>	Use of technical water	Low

The HELCOM/OSPAR Guidelines deviate significantly from the IMO G7 Guidelines and add considerable burdens to the exemption process. In particular, while the use of Large Marine Ecosystems approach, when defining a biogeographic area, was suggested by the IMO, the HELCOM/OSPAR Guidelines decided to take a very stringent approach on this matter by considering the use of local port areas. Given the importance of this issue, it is of paramount that the HELCOM/OSPAR captures the concept of general exemptions based on the concept of 'biogeographic areas' as suggested by the IMO.

This approach will facilitate the coastal shipping that is a sector of vital importance for the economy and the good environment status of the North Sea and Baltic Sea countries. This is a paramount provision, that would enable general exemptions without each operator/port having to undergo the challenging risk assessment procedures. The **Option H** is interpreted as to be a way to capture the concept of 'biogeographical area' as introduced in the G7 guidelines. For ships operating exclusively in a defined specific biogeographical area, the default position should be exemption. Option H can be further supported by **Options I, J & K** to qualify general exemptions on specific routes and for specific ships if necessary.

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## **ANNEX 1 – Background and Key issues**

### **1. The 2004 IMO Convention - Exemptions**

The primary focus of the 2004 IMO BWMC was to limit the trans-oceanic spread of invasive species between continents. The special case of short voyages is referenced to in the protocols of the deliberations leading up to the adopted Convention text, but only captured in the broadest sense in the general exemption clause (A4).

Under Regulation A4, exemptions may be granted, based on a risk assessment, taking guidance from the BWMC G7 Guidelines. Those guidelines put a significant burden of proof on the applicant and they do not provide any certainty that an exemption will actually be granted, nor that such an exemption could not be swiftly revoked if new biological data emerges. This puts the shipowner in a commercially very difficult situation and it is likely that also ships on routes that certainly could justifiably be exempted, will shy away from engaging in the process.

### **2. The HELCOM/OSPAR 2013 Guidelines**

The BWMC encourages “Parties with common interests to protect the environment, human health, property and resources in a given geographical area, to co-operate with the Parties to regional agreements to develop harmonized procedures”. Therefore, the Helsinki and OSPAR Conventions have jointly developed guidelines additional to BWMC G7 Guidelines, to ensure that exemptions are granted in a constant manner that prevents damage to the environment, human health, property or resources.

From a practical point of view – while many relevant issues have been explored in detail in these guidelines - the process outlined in the HELCOM/OSPAR guidelines is even more onerous than the process outlined in the BWMC G7 guidelines.

### **3. Legal and commercial uncertainties**

#### **3.1. Data sampling**

Under the HELCOM Monitoring and Assessment Strategy, “*Contracting States ensure that needed resources are available nationally, e.g., ships, laboratories, personnel, data management and analysis capacities and expertise, and make national commitments to implement this Strategy.*”

The Danish Environment Ministry report notes that a very limited number of countries monitor invasive species which eventually means that operators and ports will end up having to fund and undertake biological assessments for an exemption application, when it is really incumbent on the port states concerned to provide such information. In this context, it is worth noting that the EU has committed to a target to halt the loss of biodiversity and the degradation of ecosystems serviced in the EU by 2020. Part of this commitment shall include actions to be taken with regard investment in data and evidence gathering, monitoring and data sharing between EU Countries.

Furthermore, such data collected on behalf of an operator will be made publicly available, which would be to the benefit of any other operators later seeking exemptions. The Danish Environment Ministry report expands at length on designing a burden sharing mechanism, which needs to be practically assessed in detail.

#### **3.2. Time frame**

The IMO BWMC G7 guidelines limit the validity of an exemption to “not be effective for more than 5 years from the date granted”. The HELCOM/OSPAR Guidelines introduces additional limitations by stipulating that the period for the validity shall be counted from the time when the date first (Spring)

port sampling. In practice this may have the effect that the exemption period will rather be four years than five. Time frames suggested by the HELCOM/OSPAR Guidelines makes the exemption option unattractive and costly. Effectively, the requirement for a review within 12-36 months from the first sampling may withdraw an exemption at the same time it has been issued when considering that the period required to for an issuance of an exemption is 12 months from the date of first sample.

### **3.3. Exemption costs**

The Danish Environment Ministry report helpfully assesses possible costs for an exemption application, ranging from kEUR61-83. However the information provided by the Danish Environment Ministry report on the cost of exemption appears to be incorrect as it do not take into consideration the cost of an intermediate review.

Generally, HELCOM makes reference to the relatively low costs they have experienced in the few biological surveys they have undertaken, but those have not been on pure commercial contracts.

### **3.4. Withdrawal**

Under certain conditions, specified as emergency situations (such as outbreaks, incursions, infestations, or proliferations of populations of harmful aquatic organisms and pathogens) in the IMO BWMC G7 Guidelines, an already granted exemption may be withdrawn. The intention of this provision in the guidelines does not seem to be a permanent withdrawal of the exemption certificate, but rather an emergency response measure to mitigate a temporary situation.

Under the HELCOM/OSPAR framework, however, an additional reason to withdraw an exemption certificate is introduced, namely if 'new target species(s) are found in a port where an exemption is granted'. The 'emergency aspect' has thus been removed.

**This leads to a significant legal uncertainty and given the short duration of the validity of an exemption, any identification of new species should either qualify as an “emergency situation” and thus already be covered by BWMC G7 Guidelines or be factored into the intermediate review that is also outlined in G7 Guidelines. Identification of new species should not constitute grounds for immediate withdrawal of the certificate.**

In December 2013, the IMO General Assembly agreed that for ships built before the enter into force date of the BWM Convention, the requirement to meet the D2-standard shall be imposed as from the first renewal survey after enter into force, as opposed to a specified date - The same pragmatic approach should be given for withdrawal of exemptions, unless an emergency situation is declared.

## **Annex 2 - Danish Environment Ministry Report: Key Findings Summary**

### **1. Danish Environment Ministry report 2013**

The report investigates the particular challenges of the short sea line traffic and the regional traffic in the Danish parts of the North Sea and the Baltic Sea and assess the applicability of the exemption scheme for selected vessel types. The main thrust of the report is to propose a catalogue of transitional measures that would ease the implementation period of the BWMC for certain specific traffic segments, e.g. ferries and supply vessels.

### **2. Applicability of exemptions (p. 21)**

#### **2.1. RoRo / RoPAX**

Shipowners are not arguing for exemptions for ship in trans-ocean trade, nor to some extent for ships calling several ports during a voyage. In the first case, the commercial realities will simply prevent an owner from seeking an exemption, even if it theoretically could be justified – as that particular ship would effectively be locked out from any other service. In the latter case, the likelihood that a multi-port risk assessment could be demonstrably justified for an exemption is expected to be very low.

While exemptions are more likely to be granted for ships operating between two ports on a route, ships triangulating between more than two ports in a limited geographical area should also be considered for exemption. Such ships will typically be RoRo or RoPAX.

#### **2.2. Off-shore vessels (p. 22)**

Offshore supply vessels are to be considered for exemption: the small amount of the ballast they discharge and the limited geographic area of their operation in combination with their length contracts, reduces significantly the risk for introduction of a targeted invasive species.

#### **2.3. Coastal traffic (p. 23)**

The main purpose of the IMO BWMC G7 Guidelines is to offer an exemption option to the operators that trade in fixed route (ferries) and coastal services (container vessels, tankers, dry-bulk and feeder traffic). Vessels engaged on coastal trades (incl. Bunker vessels) may have regular routes but do not run them on timelines as a ferry would.

This sector is mainly consisted of vessels with ballast tank capacities below 5000 m<sup>3</sup>. The main problem the operators of these vessels face with the BWMC is the space and cost of the treatment systems (incl. upgrading of the auxiliary engines). Currently the manufactures of the available treatment systems do not take into consideration this sector and do not provide practical solutions for these types of vessels, focusing mainly on larger vessels.

Operators in this sector have raised concerns over the safety effects the installation of such equipment may have on a vessel with a restricted space. Taking into consideration the considerable size of these equipment the operators may have to consider their installation on the ship's engine room.

If such exemptions will not be provided, then many operators, who will already be straggling with higher fuel cost by 2015, will have to consider ending their operations, and impacting the economy and environment of the countries they operate.

At this stage it is important to stress that the major threat the marine ecosystems face is the introduction of invasive species by the increased interoceanic traffic volume. Therefore, taking into consideration the fact that after full implementation of the BWM Convention such risk will be considered significantly low and that vessels engaged on coastal operations have been trading in

these areas for decades, exemptions for this sector should be considered under the general exemption approach.

#### 2.4. Ports with routes operating between two ports or locations only (pp. 23-25)

The problems associated with the introduction of invasive species from ships' ballast water is mainly related to primary spread from trans-ocean shipping. The Danish Environment Ministry report ranks ports based on the frequency of trans-ocean vessel calls, demonstrating that ports with fewer trans-ocean calls, pose a lower risk. A short sea vessel calling low risk ports could therefore be shortlisted for exemption.

#### Section 2 - Summary and conclusions

The vessels for which the exemption option is considered a feasible option comprise RSS vessels (pax, ro-pax and ro-ro) and certain offshore supply ships. Only vessels calling two ports on a route are considered for further assessment. The ports used by RSS traffic which are considered feasible for exemption include a total of 52 ports connected by 39 routes, of which 15 are located in the North Sea and 24 in the Baltic Sea. The total yearly discharge of ballast water on the 39 routes is estimated to be approximately 37 million tonnes (6% of annual discharge of 635 million tonnes from all vessels calling ports in the North Sea and Baltic Sea). Offshore supply vessels have port of call in approximately 30 different ports in UK, Norway, Denmark, the Netherlands and Germany. Offshore supply discharges is estimated to 1.9 million tonnes in the North Sea (0.4% of total discharges in the North Sea).

This is a rational approach to refine the risk assessment parameters and could be used to develop a less onerous risk assessment methodology for shortlisted ships.

### 3. Transitional arrangements (for ships without granted exemption)

- A. Ballast water exchange (D1) until 2022 – Category 1 in OSPAR or HELCOM
- B. Ballast water exchange (D1) until 2022 – Category 2 in HELCOM and OSPAR
- C. Ballast water exchange (D1) until 2022 – Category 1 and 3

As the requirement to treat ballast water will not be uniform in time, ships may opt to exchange their ballast water (D1) during a transitional period until they are obliged to meet the D2 standard. If the Convention enters into force during 2015, this transitional arrangement could extend into 2022.

As the vector for spreading invasive species in short sea shipping in general, and for route bound ferries in particular, is much lower than for trans-ocean operations, it is reasonable to extend the D1 requirements on all short sea shipping vessels 'until the time where all trans-ocean operations are covered by D2.

TABLE 9: OVERVIEW OF PROPOSED OPTIONS FOR REVISED D-1 REQUIREMENT

Revised D-1 requirement			
Option	Applicability	Validity	Area
Option A.1	Category 2 ships with BW capacity <1,500 m <sup>3</sup> engaged in voyages between specified ports or locations	Until full implementation of D-2	OSPAR Region II
Option A.2	All category 2 ships with BW capacity <1,500 m <sup>3</sup>	Until full implementation of D-2	OSPAR Region II
Option A.3	Category 2 ships with BW capacity <1,500 m <sup>3</sup> engaged in voyages between specified ports or locations	Until full implementation of D-2	HELCOM
Option A.4	All category 2 ships with BW capacity <1,500 m <sup>3</sup>	Until full implementation of D-2	HELCOM
Option B.1	All category 2 ships with BW capacity >5,000 m <sup>3</sup>	Until full implementation of D-2	HELCOM and OSPAR Region II
Option C.1	Category 1 and 3 ships	Until full implementation of D-2	HELCOM and OSPAR Region II
Option C.2	Category 1 and 3 ships	Until renewal of the IOPP certificate	HELCOM and OSPAR Region II

The intricate segmentation of old/new ships, ballast water capacities and compliance dates, should read as follows:

Option A<sub>bis</sub> - BW exchange at least until 2022, for old and new ships, <5,000 m<sup>3</sup>

“D-1 exchange standard is still considered a compliance measure for [old and new] affected ships engaged in voyages between specified ports or locations only, [with BW capacity <5,000 m<sup>3</sup>] on condition that exchange is carried out as far from nearest coast [HELCOM and OSPAR Region II] as possible, in any case not closer than 12 nm from nearest coast. [To be reviewed before] the D-2 requirement is fully implemented in 2022.”

#### **D. Reduced mixing criteria**

*‘A ship which has been granted an exemption is allowed to deviate from the voyage for which the exemption is granted, for temporary contracts, dry-docking, and maintenance or repair under the condition that exchange to the D-1 standard is conducted.’*

The concept of allowing an exempt ship the opportunity to dry-dock can be supported, but the inclusion of temporary contracts needs to be further refined, for instance that such a temporary deviation should be approved beforehand by the Administration.

#### **E. Use of drinking water for temporary deviation**

*‘A vessel ... departing from a different location located outside the route on which an exemption is granted (i.e. dry dock, port for maintenance or repair) may use drinking water ... to the D-2 standard at the port or location visited.’*

This proposal could be complementary to Option D (‘Reduced mixing criteria’), especially regarding temporary contracts.

#### **F. Revised data validity**

This option sets out to safeguard the ship from having its exemption certificate withdrawn unless there is a compelling need (i.e. major new occurrences of Target Species). **Any withdrawal of an exemption certificate should be linked to the ship’s renewal survey, so that the shipowner stands a reasonable chance of fitting any necessary equipment in an orderly fashion.**

F<sub>1</sub> opens for intermediate reviews to be grounds for revoking exemptions, whereas F<sub>2</sub> suggests that initial data shall be valid until D2 has been fully enforced.

The use of existing data is considered by the HELCOM/OSPAR Guidelines, however it is not clear when such data are considered outdated.

#### **G. Temporary expansion of the one-kilometre criteria**

Option G expands on how many independent port surveys need to be undertaken within a contiguous port, in relation to the port’s size. Such expansion should be considered only when it minimizes the risk of rejection of the issuance of an exemption.

#### **H. Use of low- and high-risk areas (risk assessment based on connectivity)**

The report introduces the term ‘Connectivity’, which combines hydrodynamic modelling with biological characteristics [...] for larger bodies of water. This allows for the identification of natural dispersal of invasive species for given characteristics (transport distances) as well as location and separation of high- and low-risk areas.

The original intentions of the ‘biogeographic regions’ introduced by the IMO BWMC G7 Guidelines have been lost over time. Paragraph 6.1.3 in G7 states that:

*'Environment matching and species' biogeographical risk assessment may be best suited to assessments between biogeographic regions. Species-specific risk assessment may be best suited to situations where the assessment can be conducted on a limited number of harmful species within a biogeographic region.'*

Option H seems to encourage revisiting the original concept for exemption assessments which is therefore supported by the shipowners.

#### **I. Options for a discharge threshold approach in relation to traffic in a port**

The Danish Environment Ministry report notes that the volumes of ballast water discharged from intra-regional ships is typically very low. It therefore argues that as the D-1 exchange standard achieves approximately 95% risk reduction, ships operating intra-regionally and contributing less than 5% of the ballast water discharged in a given port, should not be required to go beyond the equivalent D1 standard until the D2 standard has been fully achieved.

As ships operating intra-regionally will not be a vector for primary spread, even this equivalent approach is very conservative.

#### **J. Ballast water threshold in relation to port type**

*'Vessels visiting only port pairs, which mainly import goods may be exempt from the D-2 requirement until the D-2 requirement is fully implemented.'*

There are here problems with inconsistencies in terms of absolute numbers. Arguably a larger port which mainly imports goods (i.e. is primarily a donor of ballast water), may still be subject to larger volumes of trans-ocean ballast water, than a smaller port that mainly exports goods. Furthermore, to link the exemption certificate to the historic business model of a port adds to uncertainty.

This notwithstanding, Option J could add to the validity of Options H and K.

#### **K. History of shipping**

*'Ships operating on routes with a history of more than, e.g. 50 years can be exempted from the requirements of the Convention until the D-2 standard is fully implemented, provided operations remain the same.'*

From earlier deliberations with Member States it appears that the marine biologists engaged in the discussions are in disagreement to such a generic approach. Option K should therefore be factored in with Options H, I and J to constitute the basis for a simplified general risk assessment provision.

#### **L. Use of drinking water for infrequent discharge**

*'A vessel engaged in intra-regional trade that discharges ballast water only on rare occasions, may per default use drinking water as ballast.'* – No specific comments.

#### **M. Use of technical water**

*'A vessel may use technical water for ballast provided that it is not mixed with other water and sediments [...]'* - Does not look as an agreeable and practical solution.