



# Book - Unit 5 - Marine Pollution and Ballast Waters

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Course: Introductory Course to the International Legal Framework on Marine Biodiversity

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# 1. Protection and preservation of marine biodiversity in global conventions on Marine Pollution

The Introductory Course to the International Legal Framework on Marine Pollution discusses a number of global conventions aimed at the prevention, reduction and control of marine pollution. However, these conventions are not specifically aimed at the protection and preservation of marine biodiversity, even though their effective implementation may lead to significant benefits in that regard.

There are nevertheless some exceptions to this general rule. For instance, MARPOL 73/78 uses a system of special areas in which more stringent discharge and emission standards for polluting substances apply. The designation of such special areas and the more stringent standards could be justified on account of the need to protect marine biodiversity.

## Particularly Sensitive Sea Areas

A coastal state or a group of coastal states that have identified an area within their EEZ where marine biodiversity is threatened by international merchant shipping could ask the International Maritime Organization (“IMO”) to designate this area as a Particularly Sensitive Sea Area (“PSSA”) and have one or more associated protective measures applied therein.

Appropriate protective measures could, for instance, be the designation of areas to be avoided or precautionary areas. As there is no exhaustive list of these measures, states could propose innovative measures as well. Most of these measures would also be available without PSSA identification but not without IMO approval. In recent years, the IMO bodies with competence to approve such protective measures have appeared to be both pragmatic and broad-minded.

## 2. International Convention for the Control and Management of Ships' Ballast Water and Sediments

The water used by ships as ballast to stabilize vessels at sea can pose serious threats to marine biodiversity as it may contain invasive alien species to the ecosystems where the ballast water is discharged.

It took 14 years to the members of the IMO to adopt, in 2004, the International Convention for the Control and Management of Ships' Ballast Water and Sediments ("2004 Ballast Water Convention"). The Convention, which has not entered into force yet, is made up of 22 articles and a single Annex consisting of Regulations and two Appendices.

## Objective and scope

Pursuant to its core obligation in article 2(1), states are obliged to give full and complete effect to all provisions 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 1(8) defines 'harmful aquatic organisms and pathogens' as "aquatic organisms and 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". This explicit reference to "biological diversity" is probably the first of its kind in an IMO convention.

The 2004 Ballast Water Convention does not address impacts of ballast water in terms of pollution. This is also why it was regarded as inappropriate to lay down its substance in an Annex to MARPOL 73/78. Treatment in this subsection on 'Global Conventions on Marine Pollution' is therefore not strictly correct.

## Management of Ballast Water

The 2004 Ballast Water Convention establishes a minimum level of regulation for certain types of ships that carry ballast water. Among other things, ships are to have on board and implement a Ballast Water Management Plan, to carry a Ballast Water Record Book and to meet ballast water management requirements. The latter necessitates existing ships to meet ballast water exchange standards and new ships to meet performance standards or alternatives that offer equal levels of protection.

Vessels using the ballast water exchange method should not discharge ballast water within 200 nautical miles from the nearest land or in waters with depths lower than 200 meters and must meet an efficiency of at least 95% volumetric exchange (Regulations B-4 and D-1).

## Further guidance for uniform implementation of the Convention

Interestingly, article 2(3) and Section C of the Annex allow states individually or in concert to regulate more stringently above this minimum level. The extent to which this Convention contributes to global uniformity in the regulation of international merchant shipping therefore remains to be seen. This concern is especially pertinent as IMO conventions take a long time to enter into force, and this convention is not expected to be any different.

The residual regulatory competence of states pursuant to article 2(3) and Section C not only acknowledges existing mandatory and voluntary regulation but also that further regulation does not have to await entry into force of the Convention. IMO has developed guidelines and procedures for uniform implementation of the Ballast Water Convention