

**National Interest Analysis [2015] ATNIA 22  
with attachment on consultation**

**International Code for Ships Operating in Polar Waters (Polar Code)**

**RESOLUTION MSC.385(94)**

(London, 21 November 2014)

**[2015] ATNIF 27**

**Amendments to the International Convention for the Safety of Life At Sea, 1974, as  
amended**

**RESOLUTION MSC.386(94)**

(London, 21 November 2014)

**[2015] AFNIF 28**

**International Code for Ships Operating in Polar Waters (Polar Code)**

**RESOLUTION MEPC.264(68)**

(London, 15 May 2015)

**[2015] ATNIF 29**

**Amendments to the Annex of the Protocol of 1978 relating to the International  
Convention for the Prevention of Pollution from Ships, 1973**

**Amendments to MARPOL Annexes I, II, IV and V**

**RESOLUTION MEPC.265(68)**

(London, 15 May 2015)

**[2015] ATNIF 30**

**NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**  
**SUMMARY PAGE**

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**Nature and timing of proposed treaty action**

1. The proposed treaty actions relate to Australia's proposed acceptance of amendments to the *International Convention for the Safety of Life at Sea, 1974, as amended* (SOLAS) [1983] ATS 22, and the *International Convention for the Prevention of Pollution from Ships, 1973* as modified by the Protocol of 1978 [1988] ATS 29 (MARPOL). These amendments make mandatory a new code entitled the International Code for Ships Operating in Polar Waters (Polar Code). The Polar Code was adopted at the International Maritime Organization (IMO) in May 2015.
2. SOLAS and MARPOL are two international conventions addressing ship safety and security, and pollution from ships, respectively. SOLAS contains the safety requirements for different types of ships including in respect of construction standards, life-saving appliances, navigation, the carriage of cargoes and dangerous goods, radio-communications, and maritime security measures. MARPOL regulates ship-generated pollution by way of six technical annexes dealing with: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution.

3. SOLAS and MARPOL are administered by the IMO, a specialised agency of the United Nations with responsibility for setting and maintaining a comprehensive regulatory framework for international shipping. The IMO has 171 Member States. Australia has been a Member since 1952, and a Party to SOLAS since 1983 and to MARPOL since 1988.
4. The IMO Committee with responsibility for SOLAS is the Maritime Safety Committee (MSC) while responsibility for MARPOL rests with the IMO's Marine Environment Protection Committee (MEPC).
5. At the 94th Session of MSC, held in London from 17 to 21 November 2014, the following Resolutions were adopted:
  - (a) **Resolution MSC.385(94)**, adopting the safety-related provisions of the Polar Code, and containing the draft environment-related provisions (at this time the environment-related provisions had not been accepted by MEPC. These were accepted in **MEPC.264(68)**).
  - (b) **Resolution MSC.386(94)**, adopting the text of amendments to SOLAS that would make the safety-related provisions of the Polar Code mandatory.
6. At the 68th session of MEPC, held in London from 11 to 15 May 2015, the following Resolutions were adopted:
  - (a) **Resolution MEPC.264(68)**, adopting the environment-related provisions of the Polar Code, and containing the full text of the Polar Code, as adopted by MSC and MEPC.
  - (b) **Resolution MEPC.265(68)**, adopting the text of amendments to MARPOL that make the environment-related provisions of the Polar Code mandatory.
7. The proposed amendments to SOLAS and MARPOL were adopted in accordance with the amendment provisions set out in SOLAS **Article VIII** (b)(iv) and MARPOL **Article 16** (2)(d).
8. Australia will be deemed to have accepted the amendments under the deemed acceptance provisions of SOLAS **Article VIII** (b)(vi)(2)(bb) and MARPOL **Article 16** (2)(f)(iii), unless it objects to the amendments by notification to the Secretary-General of the IMO. It is proposed that Australia not lodge any objection to these amendments.
9. In accordance with both SOLAS **Article VIII** (b)(vi)(2)(bb) and MARPOL **Article 16** (2)(f)(iii), the amendments will be deemed accepted on **1 July 2016** unless, prior to that date, more than one third of the Contracting Governments to the Convention, or Contracting Governments the combined merchant fleets of which constitute not less than 50% of the gross tonnage of the world's merchant fleet, have communicated to the IMO their objection to the amendments.
10. It is expected that the amendments to SOLAS and MARPOL to implement the Polar Code will enter into force on **1 January 2017**.

## Overview and national interest summary

### Polar Code – Overview

11. **MEPC.264(68)** contains the full text of the Polar Code, developed at the IMO by MSC and MEPC. The Polar Code is divided into two parts, the first covering safety and the second pollution prevention. Each part includes mandatory and recommendatory provisions.

12. The Polar Code will become mandatory through the amendments to SOLAS and MARPOL (adopted under **MSC.386(94)** and **MEPC.265(68)**, respectively) and will apply to ships operating in polar waters in both the Antarctic and Arctic. The Polar Code builds on the existing 2009 *IMO Guidelines for Ships Operating in Polar Waters* (non-mandatory), which were based on *IMO Guidelines for the Arctic* developed in 2002.
13. The Polar Code addresses the specific risks of operating in polar waters, such as: poor weather conditions; the relative lack of both good navigational charts and aids, and communication systems and aids; the potential for ice to impose additional loads on the hull and propellers; reduced effectiveness of machinery components of the ship while in low air temperatures, high latitudes or ice covered waters; and the environmental protection challenges.
14. The Polar Code addresses the risks of operating in polar waters by specifying a range of operational and structural measures for ships to improve their safety and promote protection of the polar environments. The measures cover design, construction, equipment and operational matters, as well as training, search and rescue, and environmental discharges.
15. **Part I** of the Polar Code requires ships to be constructed to a structural strength appropriate for polar conditions and for necessary equipment to be carried on board. A Polar Ship Certificate is required to be issued following a survey of the ship to ensure that the ship complies with the relevant provisions of the Polar Code.
16. **Part I** also specifies the ship must have a Polar Water Operational Manual (PWOM) that details ship-specific capability and limitation information, procedures to be followed in normal operating conditions, and procedures to be followed in the event of incidents or emergencies.
17. **Part II** of the Polar Code contains provisions for both existing and new ships. For existing ships operating in polar waters, the Polar Code imposes discharge restrictions for oil, noxious liquid substances, sewage, and garbage. For new ships (constructed on or after **1 January 2017**) the Polar Code specifies structural provisions, such as the protective location of cargo, fuel, sludge and bilge tanks.

#### National interest summary

18. Australia has a strong national interest in Antarctica, including in the safety of shipping and the environmental protection of Antarctic waters. Australia has responsibilities in a very significant portion of the Southern Ocean, including search and rescue coordination, port State control, environmental protection, hydrography and nautical charting, and safety of vessels operating in the area.
19. Australia has been actively engaged in the development of the Polar Code at the IMO in order to influence and improve safety and pollution prevention outcomes in respect of Antarctic waters. Australia's Southern Ocean maritime interests are best advanced through internationally agreed arrangements that are consistent with Antarctica's unique legal and political status. The Polar Code has been negotiated with these sensitivities in mind and will help to ensure that ships' activities are consistently regulated by their flag States in conformity with the standards set out in IMO instruments.

#### **Reasons for Australia to take the proposed treaty action**

20. Australia has a strong national interest in Antarctica, including in the safety of shipping and the environmental protection of Antarctic waters and Antarctic

operations. This also includes sea areas outside of these waters for which Australia has search and rescue coordination responsibility.

#### *Antarctica*

21. Activities in Antarctica are governed by the Antarctic Treaty System. This includes three principal international agreements (the *Agreement between Australia and [11 States] concerning the Peaceful Uses of Antarctica* (known as the Antarctic Treaty) [1961] ATS 12, the *Protocol and Annexes on the Environmental Protection to the Antarctic Treaty* [1998] ATS 6 (Protocol) and the *Convention on the Conservation of Antarctic Marine Living Resources* [1982] ATS 9). Australia is actively committed to the Antarctic Treaty System, which protects Australia's national interests. Australia has scientific, environmental, economic, and strategic interests in Antarctica.
22. Australia is one of the twelve original signatories to the Antarctic Treaty<sup>1</sup> and one of seven nations which assert sovereignty over a portion of Antarctica. The Australian Antarctic Territory covers 42 per cent of Antarctica, the largest territorial claim of any State. There is an established practice amongst Antarctic Treaty Parties that States will not enforce their domestic law against foreign nationals in Antarctica. Instead, effective regulation of activities in Antarctica is achieved through collective rule making, principally, under the Antarctic Treaty system.
23. Acceptance of the SOLAS and MARPOL amendments making the Polar Code mandatory is consistent with Australia's interests and will assist in demonstrating the Australian Government's ongoing commitment to effective regulation of shipping and environmental protection in Antarctica.

#### *Ship safety and environmental protection in polar waters*

24. Australia has demonstrated leadership in many areas of maritime safety and marine environment protection, as successive governments have recognised the importance of embracing internationally consistent measures and standards in the maritime industry. Australia's focus on ship safety and marine environment protection is, in part, due to its heavy reliance on the international maritime industry to underpin its international trade.
25. In the context of the proposed Polar Code, Australia's broad interest in ship safety issues and marine environment protection is underscored by its search and rescue interests, Antarctic-specific environmental obligations, and interests in ensuring appropriate environmental protection standards in the Antarctic region.
26. Australia has direct interest in increasing the safety of vessels in polar waters. Australia, under numerous international agreements, is responsible for search and rescue coordination over a vast area made up of the East Indian, South-west Pacific and Southern Oceans, including Antarctic waters. Australia is one of relatively few countries operating in the Australian region of the Southern Ocean. Any incident in this area may pose a significant risk of disruption to transiting trading ships, which may be requested by the Australian Maritime Safety Authority (AMSA) to render assistance (AMSA having regulatory responsibility for marine activity as an agency within the Portfolio of the Department of Infrastructure and Regional Development). An incident may also disrupt the delivery of the Australian Antarctic programme.

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<sup>1</sup> Australia, Argentina, Belgium, Chile, France, Japan, New Zealand, Norway, South Africa, USSR, United Kingdom, United States

27. The Protocol on Environmental Protection to the Antarctic Treaty 1991 designates Antarctica as a “natural reserve, devoted to peace and science”. The Protocol has six Annexes. **Annex IV**, covering marine pollution, broadly resembles the types of requirements imposed by MARPOL to prevent pollution by oil, noxious substances, garbage, and sewage from ships.
28. Australia’s ongoing commitment to the Antarctic Treaty System, continuing support for environmental protection of Antarctic waters, and Australia’s search and rescue obligations, indicate that adopting the SOLAS and MARPOL amendments making the Polar Code mandatory will be consistent with, and serve, Australia’s interests.

### **Obligations**

29. As a Party to both SOLAS and MARPOL, Australia has an obligation to meet the requirements set out in these treaties, as amended from time to time. This obligation does not apply in respect of amendments to which Australia has objected, by lodging a formal declaration with the Secretary-General of the IMO within the relevant time period (SOLAS, **Article VIII** (b)(vii)(2); MARPOL, **Article 16** (2)(g)(ii)).
30. The Polar Code consists of an Introduction and two parts. Each part includes provisions which are mandatory (imposing certain obligations on Parties to SOLAS and MARPOL), as well provisions which are recommendatory in nature.
31. **Part I** of the Polar Code contains safety measures and requires the Parties to:
  - (a) Ensure that all new ships intended for operation in polar waters are of a structural strength appropriate for polar conditions;
  - (b) Ensure that necessary equipment is carried on board ships, such as personal survival, communication and navigational equipment;
  - (c) Issue a Polar Ship Certificate that certifies that the ship meets the requirements of the Polar Code, following a survey of the ship in accordance with the applicable safety-related provisions of the Polar Code; and
  - (d) Ensure that ships carry a Polar Water Operational Manual, which includes information on ship-specific capabilities and limitations.
32. **Part II** of the Polar Code requires the Parties to:
  - (a) Implement discharge restrictions for oil, noxious liquid substances, sewage, and garbage, on ships operating in polar waters; and
  - (b) For certain new ships, ensure additional structural provisions, for the protective location of fuel, oil and cargo tanks, when operating in polar waters.
33. Resolutions **MSC.385(94)** and **MEPC.264(68)** invite Contracting Governments to consider the voluntary application of the Polar Code to ships not covered by the Polar Code, but operating in polar waters.

### **Implementation**

34. Australia will need to make legislative amendments to its domestic legislation to implement the obligations in these treaty actions.
35. Amendments to some Marine Orders made under the *Navigation Act 2012* and the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (POTS Act) are required. Marine Orders are legislative instruments made by AMSA’s Chief Executive Officer.
36. The POTS Act already applies strict discharge requirements in the Antarctic area, consistent with MARPOL, but minor amendments may be needed. The Department

and AMSA are currently giving consideration to whether any amendments will be required and any necessary actions will be progressed prior to the entry into force date for the Polar Code.

37. Australia already has the capability and governance structures to enforce compliance with these obligations. AMSA already implements flag State and port State obligations related to ensuring that ships comply with the relevant international standards.

### **Costs**

38. The Office of Best Practice Regulation advised the Department of Infrastructure and Regional Development that Regulation Impact Statements are not required for any of the Resolutions as the proposal is likely to have only a minor regulatory impact on business, community organisations or individuals. This is because the proposal is not likely to impact on any existing private Australian flagged vessels, and any impact on other operators will be as a result of other countries' regulation.

### **Future treaty action**

39. Any future amendments to SOLAS must be effected in accordance with the amendment provisions specified in **Article VIII** (Amendments) of SOLAS. Any future amendments to MARPOL or its 1978 or 1997 Protocols must be effected in accordance with **Article 16** of MARPOL.
40. In general, the amendment provisions of both SOLAS and MARPOL provide for two methods of amendment (once the relevant amendments have been considered within the IMO or by a Conference of the Parties). Under the first method, amendments are adopted by a two-thirds majority of the Parties present and voting. Under the second method, referred to as a 'tacit acceptance' procedure, the amendments are deemed accepted on a specified date unless a defined number of Contracting Governments, or Contracting Governments representing a defined proportion of the world's merchant fleet, object within a prescribed time period.
41. Future amendments to either SOLAS or MARPOL will constitute a treaty action and be subject to completion of the relevant Australian domestic legal and treaty-making requirements.

### **Withdrawal or denunciation**

42. **Article XI** (Denunciation) of SOLAS states that a Contracting Government may denounce the Convention at any stage following five years from the date on which it entered into force for that Government. This is achieved by depositing an instrument of denunciation with the Secretary-General of the IMO, who shall inform other Contracting Governments of its receipt. A denunciation shall take effect one year after receipt of the instrument, unless the instrument specifies a longer period.
43. MARPOL and any of its Optional Annexes (which includes **Annexes IV** and **V**) may be denounced by a Party to the Convention at any time after the expiry of five years from the date on which the Convention or such Annex enters into force for that Party. Denunciation is effected by deposit of an instrument of denunciation with the Secretary-General of the IMO and takes effect one year after such deposit, or a longer period if indicated in the instrument.
44. **Annexes I** and **II** are not 'optional annexes'; therefore, the acceptance of Annexes I and II is obligatory for all contracting Parties to MARPOL, and those Annexes can be denounced only in combination with MARPOL.

45. Any decision by Australia to denounce either SOLAS or MARPOL will be subject to Australia's domestic treaty making requirements, including consideration by JSCOT and Executive Council approval.

Contact details

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## **ATTACHMENT ON CONSULTATION**

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## **CONSULTATION**

46. Australia, through the Australian Maritime Safety Authority (AMSA), an agency within the portfolio of the Department of Infrastructure and Regional Development, consults with its key stakeholders, which include industry peak bodies, during the development of its positioning on matters of maritime regulation at the International Maritime Organization ('IMO'). AMSA ensures that it keeps all stakeholders advised of IMO papers that address proposed amendments and development of new codes or standards under the SOLAS and MARPOL treaties.
47. The major maritime industry stakeholders consulted generally by AMSA include:
  - (a) **Maritime Industry Australia Limited (MIAL):** MIAL represent Australian companies which own or operate international and/or domestic trading ships, cruise ships, domestic towage and salvage tugs, dredges, scientific research vessels and offshore oil and gas support vessels. MIAL also represents employers of the Australian and international maritime labour.

- (b) **Shipping Australia Limited (SAL):** SAL is a peak industry body whose members cover many of the major Australian and international ship owners, operators and agency companies involved in bulk, tanker, general cargo, container and passenger shipping, and tramp trades.
- (c) **Australian Shipbuilding and Repair Group (ASRG):** ASRG is the recognised peak industry body representing and promoting the capability of the Australian shipbuilding and repair industry sectors to the domestic and international markets.

48. The stakeholders consulted by AMSA for the development of the Polar Code include:

- (a) P&O Maritime Services;
- (b) BAE Systems Australia;
- (c) Aurora Expeditions;
- (d) Ocean Expeditions;
- (e) Orlon Expeditions;
- (f) Australian Antarctic Division;
- (g) Commonwealth Scientific and Industrial Research Organisation;
- (h) Department of Foreign Affairs and Trade;
- (i) the then Australian Customs and Border Protection Service;
- (j) Department of Defence;
- (k) Attorney-General's Department; and
- (l) Australian Maritime College and University of Tasmania.

The views of these stakeholders, including specific technical input, were included in Australia's position during development of the relevant chapters and sections of the Polar Code.

49. The consultation on the adoption of Polar Code and the amendments to the treaties resulted in no dissenting views being expressed by any of the stakeholders.