

**National Interest Analysis [2011] ATNIA 33
with attachment on consultation**

**Revised MARPOL Annex V:
Regulations for the Prevention of Pollution by Garbage from Ships**

**(Resolution MEPC.201(62))
Adopted at London on 15 July 2011**

[2011] ATNIF 24

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

Revised MARPOL Annex V: Regulations for the Prevention of Pollution by Garbage from Ships

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Nature and timing of proposed treaty action

1. The *International Convention for the Prevention of Pollution from Ships* (MARPOL) is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six technical annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution. It is administered by the International Maritime Organization (IMO).
2. The proposed treaty action is tacit acceptance of a revised version of Annex V of MARPOL ([1990] ATS 34), adopted by the IMO Marine Environment Protection Committee (MEPC) under cover of resolution MEPC.201(62) on 15 July 2011 (“the revised Annex V”). Annex V contains regulations for the prevention of pollution by garbage from ships. The revised Annex V was adopted in response to resolution A/RES/60/30 of the UN General Assembly (March 2006), which invited the IMO to review MARPOL Annex V, to assess its effectiveness in addressing sea-based sources of marine debris.
3. In accordance with the amendment procedure set out in MARPOL, the revised Annex V will be deemed to have been accepted on 1 July 2012, unless prior to that date, not less than one-third of the Parties or Parties the combined fleets of which constitute not less than 50 per cent of the gross tonnage of the world’s merchant fleet, have communicated to IMO their objection to the revised Annex V (“tacit acceptance”). Upon acceptance, the revised Annex V will enter into force on 1 January 2013.

Overview and national interest summary

4. Australia is a Party to MARPOL and its six Annexes. The revised Annex V will upgrade current international regulations for the prevention of pollution by garbage from ships following a review undertaken by the IMO to place additional restrictions on the disposal of garbage from ships at sea.
5. The revised Annex V includes a new requirement specifying that discharge of all garbage into the sea is prohibited, except as expressly provided otherwise. The only discharges permitted in certain circumstances include food wastes, cargo residues, water used for washing deck and external surfaces containing cleaning agents or additives which are not harmful to the marine environment, and animal carcasses. The existing requirements for placards and garbage management plans are extended to fixed and floating platforms engaged in exploration and exploitation of the sea-bed.

Reasons for Australia to take the proposed treaty action

6. Marine debris in the oceans is one of the major threats to the marine environment, estimated to kill more than one million seabirds and 100,000 marine mammals and turtles each year through ingestion and entanglement. Certain types of garbage also have the potential to cause damage to vessels and harm to human life. While land-based sources remain the major contributor to marine debris, shipping is nevertheless a significant contributor.
7. “Garbage” is broadly defined in the revised Annex V, and includes all kinds of food wastes, domestic wastes and operational wastes, all plastics, cargo residues, incinerator ashes, cooking oil, fishing gear and animal carcasses.
8. The preamble of MARPOL includes a reference to the desire of the parties to achieve the complete elimination of intentional pollution of the marine environment. The review and resulting amendments is a major step towards achieving that goal.
9. Australian laws restricting the discharge of certain types of garbage, including the prohibition of plastics, have been in place since 1990. Australia’s acceptance of the revised Annex V is consistent not only with Australia’s long-standing support for protection of the marine environment, but also with Australia’s active backing of, and participation in, the IMO.
10. The revised Annex V is in accordance with Australia’s general obligations as a Party to the *United Nations Convention on the Law of the Sea* 1982 (UNCLOS, [1994] ATS 31). This provides for nations to adopt laws and regulations that at least have the same effect as that of generally accepted international rules and standards for the prevention, reduction and control of pollution of the marine environment from vessels (Article 211).

Obligations

11. Australia is obliged to give effect in domestic law to the provisions of MARPOL and its Annexes. These make provision to prevent the pollution of the marine environment by the discharge of polluting substances. A summary of those obligations is set out below.
12. The revised Annex V prohibits the discharge of all garbage into the sea except as provided otherwise. Regulation 7 sets out the types of situations that are exempt from the application of Regulations 3, 4, 5 and 6 of the revised Annex V (which prohibit or limit the discharge of garbage). These exemptions comprise:
 - the discharge of garbage from a ship necessary for the purpose of securing the safety of a ship and those on board or saving life at sea;
 - the accidental loss of garbage resulting from damage to a ship or its equipment;
 - the accidental loss of fishing gear from a ship;
 - the discharge of fishing gear from a ship for the protection of the marine environment or for the safety of that ship or its crew.

13. The discharges permitted in certain limited circumstances include:
- food wastes (3 nautical miles from the nearest land if treated, 12 nautical miles if not treated) (Regulation 4.1, subparagraphs 1 and 2);
 - cargo residues that are not harmful to the marine environment (12 nautical miles from the nearest land) (Regulation 4.1.3);
 - water used for washing deck and external surfaces containing cleaning agents or additives which are not harmful to the marine environment (Regulation 4.2);
 - animal carcasses providing the discharge is as far as possible from the nearest land, taking into account the guidelines developed by the IMO (Regulation 4.1.4).
14. Every ship of 12 metres or more in length, and fixed or floating platforms, would be required to display placards notifying passengers and crew of the discharge requirements set out in the revised Annex V (Regulation 10.1). Ships of 100 gross tonnage and above or which are certified to carry 15 or more persons, as well as fixed and floating platforms, will be required to carry a garbage management plan setting out written procedures for the collection, storage, processing and disposal of garbage (Regulation 10.2). Ships of 400 gross tonnage and above would be required to maintain a Garbage Record Book (Regulation 10.3).

Port state obligations

15. Under Regulation 8, Australia would need to ensure adequate facilities are provided at its ports and terminals for the reception of garbage (without causing undue delay to ships, and according to the needs of the ships using them – Regulation 8.1) and notify the IMO of all cases where the facilities were alleged to be inadequate (Regulation 8.3). Similar obligations exist under Regulation 6.3 in respect of ports where ships depart en route to, or arrive from, the Antarctic area and Regulation 8.2 in relation to ports and terminals within special areas.
16. Where there are clear grounds for believing that the master or crew of a foreign flagged ship is not familiar with essential shipboard procedures relating to the prevention of pollution by garbage, and the ship is inspected when in an Australian port or offshore terminal, Australia would be required to take such steps to ensure that the ship does not sail until the situation has been rectified (Regulation 9).
17. Australia would also need to ensure that any inspection of a ship's Garbage Record Book or ship's official log-book, and the taking of a certified copy, while a ship is in its ports or offshore terminals, shall be performed as expeditiously as possible without causing the ship to be unduly delayed (Regulation 10.5).
18. The accidental loss or discharge of fishing gear which poses a significant threat to the marine environment or navigation is required to be reported to the ship's flag State, and, where the loss or discharge occurs within waters subject to the jurisdiction of a coastal State, also to that coastal State (Regulation 10.6).

Implementation

19. Amendments will be needed to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* (Cth) and Marine Orders - Part 95 (Marine Pollution Prevention - Garbage) to implement the proposed treaty action.

Costs

20. The revised Annex V is expected to have a minimal cost impact on Australia. Many Australian shipowners and operators already follow a policy of not discharging waste at sea, other than food waste in some circumstances, which is fully consistent with the revised Annex V.
21. While the expansion of the requirements for placards and garbage management plans to fixed and floating platforms will have an administrative impact, this impact is expected to be negligible.
22. Australia already has mandatory requirements for livestock management and shipment, including requirements for the disposal of animal carcasses. The disposal requirements we apply are currently more stringent than the revised Annex V. None of the vessels currently engaged in livestock export from Australia are Australian flagged, although they all comply with the Australian requirements.
23. It is expected the revised Annex V will result in an increased demand for waste reception facilities in ports. As waste removal services for ships in Australian ports are almost exclusively provided by private waste removal contractors, it is anticipated that any increase in demand will be met through commercial arrangements.

Regulation Impact Statement

24. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

Future treaty action

25. Article 16 of MARPOL and Article VI of the *Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships* ([1988] ATS 29) together specify the amendment procedure for future amendments to MARPOL and its Annexes. This includes amendment by a 'tacit acceptance' procedure, whereby amendments automatically enter into force on a specified date unless an agreed number of Parties object by an agreed date.
26. Amendments are usually adopted by either MEPC or by a Conference of Parties to MARPOL (by a two-thirds majority of the Parties to MARPOL present and voting).
27. Future treaty action would be subject to Australia's domestic treaty process.

Withdrawal or denunciation

28. Article 18 of MARPOL sets out the procedures and conditions for denunciation.
29. Any Optional Annex (which includes Annex V) may be denounced by any Party to MARPOL (or its Protocols) at any time after the expiry of five years from the date on which such an Annex enters into force for that Party.

30. Denunciation shall be effected by notification in writing to the Secretary-General of the IMO, who shall inform all the other Parties of any such notification received and of the date of its receipt as well as the date on which such denunciation takes effect.
31. The denunciation would take effect 12 months after receipt of the notification of denunciation by the Secretary-General or after the expiry of any other longer period which may be indicated in the notification.
32. Any decision to denounce MARPOL or any of its Annexes would be subject to Australia's domestic treaty process.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

33. In addition to direct consultation on specific issues, each meeting of the Australian Maritime Group (AMG) includes a standing agenda item on marine environment issues. In this forum, the States and the Northern Territory are provided with a summary of amendments to conventions and key issues relating to protection of the marine environment scheduled for formal adoption and/or discussion at IMO meetings. Via the Australian Maritime Safety Authority (AMSA) web site, AMSA provides AMG members with access to IMO Committee and Sub-Committee documentation, including agenda and submitted papers. Members are invited to provide comment on these papers to the relevant Commonwealth contact as appropriate. In relation to the revised Annex V, comments were received from some States expressing concern regarding the additional administrative burden that would result if the tonnage requirement for vessels to carry a Garbage Record Book was reduced to a figure less than 400 gross tons. These concerns were reflected in briefing for the relevant Committee sessions and ultimately no such amendments were included in the final text.
34. A standing agenda item on environment issues is also provided at meetings of the AMSA Advisory Committee. AMSA provides a detailed paper to update the Committee on current issues associated with AMSA's environmental activities, including those that might impact on the maritime industry and the role of AMSA within the next few years. Membership of the AMSA Advisory Committee includes senior representatives from many of AMSA's key stakeholders, including Shipping Australia, the National Offshore Petroleum Safety Authority, Ports Australia, Australian Shipowners Association, Australian Antarctic Division and the Australian Maritime College.
35. Additional consultation on issues being considered as part of the review of Annex V was undertaken on an ad hoc basis in forums such as:
- Ports Australia Environment and Sustainability Working Group; and
 - Bulk Cargoes Advisory Committee.
36. In addition to the above, consultations were undertaken with LiveShip and the Department of Sustainability, Environment, Water, Population and Communities. LiveShip provided considerable input on matters relating to the disposal of animal carcasses, and their views were reflected in briefing for the relevant sessions of MEPC. The final text adopted by MEPC reflects the industry position.