

**National Interest Analysis [2012] ATNIA 3
with attachment on consultation**

**RESOLUTION MEPC.193(61):
AMENDMENTS TO THE ANNEX OF THE PROTOCOL OF 1978 RELATING TO
THE INTERNATIONAL CONVENTION FOR THE PREVENTION OF
POLLUTION FROM SHIPS, 1973 (MARPOL)**

**(Revised MARPOL Annex III:
Regulations for the Prevention of Pollution by Harmful Substances
Carried by Sea in Packaged Form)**

Adopted at London on 1 October 2010

[2011] ATNIF 31

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of proposed treaty action

1. The *International Convention for the Prevention of Pollution from Ships* (MARPOL, [1988] ATS 29) 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.
2. The proposed treaty action is tacit acceptance of a revised version of Annex III of MARPOL ([1995] ATS 4), adopted on 1 October 2010 by the Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) under cover of resolution MEPC.193(61) ('the revised Annex III'). Annex III establishes Regulations for the prevention of pollution by harmful substances carried by sea. The purpose of the revision to Annex III is primarily to maintain consistency with the mandatory IMO International Maritime Dangerous Goods (IMDG) Code, which sets out the requirements for packing, marking, labelling, documentation, stowage, and quantity limitations that must be complied with in order to satisfy the Regulations in the revised Annex III and to strengthen port State control requirements for the purposes of that Annex.
3. In accordance with the amendment procedure set out in MARPOL, the revised Annex III shall be deemed to have been accepted on 1 July 2013 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 the IMO their objection to the revised Annex III ('tacit acceptance'). Upon acceptance, the revised Annex III will enter into force generally on 1 January 2014.

Overview and national interest summary

4. The carriage of harmful substances in packaged form is one of the major threats to the marine environment, and has the potential to cause damage to vessels and harm to human life. The revised Annex III will ensure that substances are carried in accordance with the latest international standards and will result in an enhanced port State control inspection program which will ensure that operational requirements are complied with at the time of departure by ships from Australian ports.

Reasons for Australia to take the proposed treaty action

5. Acceptance of the revised Annex III is consistent with Australia's long-standing support for protection of the marine environment and with Australia's active backing of and participation in meetings of the IMO.
6. The preamble to MARPOL affirms the desire of the Parties to achieve the complete elimination of intentional marine pollution. The revised Annex III will help achieve this aim by providing greater protection for the marine environment that is vulnerable to pollution by accidental discharge of harmful substances in packaged form.
7. In addition, acceptance of the revised Annex III is in accordance with Australia's general obligations as a Party to the *United Nations Convention on the Law of the Sea* (UNCLOS, [1994] ATS 31), which provides for States to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels (Article 211 of UNCLOS).

Obligations

8. Revised Regulation 3 clarifies the requirement for durable labelling of harmful substances in packaged form to indicate that they are harmful by specifying that they must be marked or labelled in accordance with the IMDG Code. The method for affixing marks or labels must also be in accordance with the IMDG Code.
9. Revised Regulation 4 requires documentation related to the carriage of harmful substances to be in accordance with the IMDG Code and revises the text relating to the requirements for a special list, stowage plan or manifest of harmful substances carried on a ship to be made available to the port State authority before a ship's departure.
10. Revised Regulation 8 clarifies the powers of authorised officers to inspect ships during port State control inspections with regard to the operational requirements of the revised Annex III. Under the revised Regulation, such powers are provided regardless of whether or not there are clear grounds for believing that the master or crew are not familiar with essential shipboard procedures. These amendments will have no impact on the number of ships the Australian Maritime Safety Authority (AMSA) inspects as part of its port State control inspection program. The only parties impacted will be the master or crew of a ship that is found not to be familiar with essential shipboard procedures. The existing power to detain such a ship in Regulation 8 is retained.
11. The Appendix to the revised Annex III (containing technical criteria for the identification of harmful substances) has been amended to include details of the degradability and chronic toxicity of substances for fish, crustaceans and algae and other aquatic plants.
12. The current requirement for Parties to issue detailed requirements on packing, marking, labelling, documentation, stowage, quality limitations and exceptions for preventing or minimising pollution of the marine environment is unchanged (paragraph 3 of Regulation 1).
13. There are no changes to Regulations covering the stowage of harmful packaged substances (Regulation 5), quantitative limitations on the carriage of harmful packaged substances (Regulation 6) or jettisoning of harmful packaged substances at sea (Regulation 7).

Implementation

14. Minor amendments will be needed to the Marine Orders, Part 94 (Marine Pollution Prevention – Packaged Harmful Substances), to implement the proposed treaty action.

Costs

15. The revised Annex III will not result in any increased costs or savings to the Australian Government or to the States and Territories.

Regulation Impact Statement

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

Future treaty action

17. Future amendments to the revised Annex III or other Annexes to MARPOL will be made in accordance with the amendment procedures set out in Article 16 of MARPOL. This includes amendment by IMO's 'tacit acceptance' amendment procedure, whereby amendments enter into force on a specified date unless an agreed number of Parties object by an agreed date. Amendments to Annexes of MARPOL are usually adopted by either MEPC or by a Conference of Parties to MARPOL. Any future amendments would be subject to the Australian treaty process.

Withdrawal or denunciation

18. Article 18 of MARPOL provides that a Party may denounce any Optional Annex (including the revised Annex III) at any time after the expiry of five years from the date on which the Annex enters into force for that Party. Denunciation would be effected by the deposit of an instrument of denunciation with the Secretary-General of the IMO and would take effect 12 months after the receipt of such notification by the Secretary-General, or at a later date specified in the notification.
19. 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

20. A standing agenda item on environment issues is provided to the AMSA Advisory Committee (AAC) at each of its meetings. At each meeting, AMSA provides a detailed paper to update the AAC 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 AAC includes senior representatives from many of AMSA's key stakeholders, including Shipping Australia, the National Offshore Petroleum Safety and Environmental Management Authority, Ports Australia, the Australian Shipowners Association, the Australian Antarctic Division and the Australian Maritime College.
21. The State and Territory Governments have been consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) and the Australian Maritime Group (AMG). Information on the revised Annex III was provided to State and Territory representatives for consideration at the SCOT meeting in October 2010. SCOT has not requested further information or provided any comments on the revised Annex III.
22. The AMG usually meets twice a year. Each AMG meeting includes a standing agenda item on marine environment issues. In this forum, States and the Northern Territory are provided with a summary of proposed amendments to conventions and key issues relating to the protection of the marine environment scheduled for formal adoption and/or discussion at IMO meetings. Via the 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. No comments were received from AMG members on the revised Annex III.