

National Interest Analysis [2011] ATNIA 28

with attachment on consultation

**Resolution MEPC.200(62):
Amendments to the Annex of the Protocol of 1978 Relating to the International Convention
for the Prevention of Pollution from Ships, 1973
(Special Area Provisions and the Designation of the Baltic Sea as a Special Area
under MARPOL Annex IV)**

Adopted at London on 15 July 2011

[2011] ATNIF 19

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) 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. On 15 July 2011, the Marine Environment Protection Committee of the International Maritime Organization (IMO) adopted Resolution MEPC.200(62) to amend Annex IV of MARPOL ([2007] ATS 47) to provide for the declaration of "special areas" for purposes of that Annex ("the proposed amendments"). "Special areas" will be areas described in Annex IV where, for recognized technical reasons in relation to their oceanographical and ecological conditions and to the particular character of their traffic, the adoption of special mandatory methods for the prevention of pollution by sewage is required.
3. The proposed amendments to Annex IV designate and describe one sea area, namely the Baltic Sea area, to be a special area for the prevention of pollution by sewage from passenger ships. The discharge requirements applicable to passenger ships in special areas will apply in the Baltic Sea area from 1 January 2016 for new passenger ships and from 1 January 2018 for existing passenger ships, or from a later date determined by IMO if facilities for the reception of sewage at ports and terminals in the Baltic Sea area are not adequate by the specified dates.
4. In accordance with the amendment procedure set out in MARPOL, the proposed amendments shall 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 proposed amendments. Upon acceptance, the proposed amendments will enter into force generally on 1 January 2013.

Overview and national interest summary

5. The discharge of large amounts of sewage into the sea and the resulting high concentration of nitrogen and phosphorus leads to blooms of blue-green algae. As the algae die and decompose, high levels of organic matter and the decomposing organisms deplete the water of available oxygen,

causing the death of other organisms, such as fish. The proposed amendments to Annex IV of MARPOL will result in a reduction of the amount of sewage discharged into the Baltic Sea area.

Reasons for Australia to take the proposed treaty action

6. Acceptance of the proposed amendments to Annex IV is consistent with Australia's long-standing support for protection of the marine environment and also Australia's active backing of, and participation in meetings of, IMO.

7. The chapeau of MARPOL includes a reference to the desire of the Parties to achieve the complete elimination of intentional marine pollution. The proposed amendments provide greater protection for an area that is particularly vulnerable to pollution by sewage.

8. In addition, acceptance of the proposed amendments 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

9. The requirements of Annex IV relating to the discharge of sewage from ships apply only to ships engaged in international voyages. The requirements apply to all such ships of 400 gross tons and over and those ships with a gross tonnage of less than 400 which are certified to carry more than 15 persons (as crew or passengers). Ships to which Annex IV applies are required to be equipped with a sewage system, being either: a sewage treatment plant which complies with IMO standards; a sewage comminuting and disinfecting system; or a holding tank for the retention of sewage. Discharge of sewage from ships at sea is prohibited unless:

- the ship has in operation an approved sewage treatment plant which has been certified to meet IMO requirements by the administration of the State in which the ship is registered; or
- the discharge is carried out using a comminuting and disinfecting system so long as the ship is more than three nautical miles from the nearest land; or
- the discharge is carried out from a holding tank so long as the ship is more than 12 nautical miles from the nearest land, the ship is proceeding en route and the discharge is not instantaneous.

10. The proposed amendments provide further controls on the discharge of sewage into the sea in areas where shipping activity generates a large concentration of sewage by enabling such areas to be declared to be special areas for purposes of Annex IV. The proposed amendments apply to ships which are carrying more than 12 passengers. The proposed amendments will apply in the Baltic Sea area and in any future special areas to new ships from 1 January 2016 and to existing ships from 1 January 2018, or from a later date determined by IMO after the requirements of paragraph 1 of new Article 12*bis* to provide adequate facilities for the reception of sewage in ports and terminals in the special area have been met. Australia will be required to ensure that any such ships which come under Australian jurisdiction and which are operating in a special area are equipped with either an approved sewage treatment plant or with a holding tank of suitable capacity.

11. There are consequential amendments to the form of the International Sewage Pollution Prevention Certificate, which are set out in the Appendix to Annex IV.

12. Each State Party to Annex IV whose coastline borders a special area will be required to ensure that adequate facilities for the reception of sewage are provided in ports in that State which are used by passenger ships. This will impose obligations on Australia only if, at some time in the future, an area of the sea off the Australian coastline is declared to be a special area for purposes of Annex IV.

13. The designation of the Baltic Sea area as a special area for purposes of Annex IV is aimed at the passenger ships which carry large numbers of passengers to and from the ports in countries that border the Baltic Sea area (Denmark, Estonia, Finland, Germany, Latvia, Lithuania, Poland, Russian Federation and Sweden). The amendments are expected to have no impact on Australia. It is highly unlikely that any Australian passenger ship will travel through the Baltic Sea area or that any ship will travel through that special area as part of a voyage to or from Australia.

14. It is appropriate that the Baltic Sea be designated as a special area under Annex IV as it is one of the most intensively trafficked sea areas in the world. World-wide, including in the Baltic Sea, both the number and the size of ships have been growing during recent years, and this trend is expected to continue. There has been a significant increase in passenger and cruise traffic in the Baltic Sea, significantly adding to the amount of sewage created on board. Passenger ships operating in the Baltic Sea typically have 2,000-5,000 people on board. Annually, there are about 90 million international passenger movements through the major passenger ports in the Baltic Sea area.

Implementation

15. The proposed amendments to Annex IV of MARPOL will be implemented in Australia by amendments to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*. However, as the proposed amendments are unlikely to have any effect on ships over which Australia has jurisdiction there will be few, if any, administrative or enforcement requirements.

Costs

16. The proposed amendments will not result in any increased costs or savings to the Australian Government or to the States and Territories.

Regulation Impact Statement

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

Future treaty action

18. Future amendments to Annex IV or other Annexes to MARPOL will be in accordance with the amendment procedures set out in MARPOL. This includes amendment by IMO's "tacit acceptance" amendment procedure, whereby the amendments enter into force on a specified date

unless an agreed number of Parties object by an agreed date. Amendments are usually adopted by either IMO's Marine Environment Protection Committee (MEPC) or by a Conference of Parties to MARPOL. All amendments would be subject to the Australian treaty process.

Withdrawal or denunciation

19. The proposed amendments to Annex IV cannot be denounced separately. The only way that Australia could denounce the amendments would be to denounce the whole of Annex IV. Denunciation would be effected by the deposit of an instrument of denunciation with the Secretary-General of IMO.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

20. Because the proposed amendments will have no immediate effect on ships over which Australia has jurisdiction, no formal consultation was undertaken with industry. However, a standing agenda item on environment issues is provided at meetings of the Australian Maritime Safety Authority (AMSA) Advisory Committee. At each Advisory Committee meeting, 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. 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.

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 proposed amendments 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 proposed amendments.

22. The AMG usually meets twice each 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 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 the agenda and submitted papers. Members are invited to provide comment on these papers to the relevant Commonwealth contact as appropriate. No comments were received on the proposed amendments to Annex IV.