

Resolution MEPC.189(60), Adopted on 26 March 2010: Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973

Introduction

- 2.1 On 23 March 2011, the *Resolution MPEC.189(60) Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973* (MARPOL) was tabled in the Commonwealth Parliament.
- 2.2 MARPOL is a multilateral treaty instrument intended to regulate marine pollution. The amendments under consideration add a new Chapter 9 to MARPOL that relates to the use and transport of heavy oils in the Antarctic seas.¹
- 2.3 The Antarctic Sea south of latitude 60 degrees is categorised as a ‘special protection area’ for the purposes of the MARPOL.² A ‘special protection area’ is a sea area for which special mandatory methods for the prevention

1 *National Interest Analysis (NIA) [2011] ATNIA 7, Resolution MPEC.189(60) Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973, done at London on 26 March 2010, [2011] ATNIF 3, para. 1.*

2 For the purposes of Annexes I, II and V. See NIA, para. 13.

of sea pollution is required because of the nature of the sea traffic and the oceanographic and ecological condition of the sea.³

- 2.4 The new Chapter will prohibit, except in certain circumstances, the bulk transportation and use as fuel of heavy oils, bitumen and tar and their emulsions in the region (referred to hereafter as HFOs).⁴
- 2.5 The exemptions to the prohibition on carriage of HFOs include vessels engaged in securing the safety of ships or in a search and rescue operation,⁵ and ships owned and operated by governments, such as naval vessels, auxiliaries and research vessels.⁶
- 2.6 According to the *National Interest Analysis* (NIA), in the extreme weather conditions of the Antarctic region, oil decomposition is very slow and so spillage of HFOs poses a serious environmental hazard.⁷

The cost of HFO spills is ten times the cost for lighter crudes or diesel fuel clean-ups. This is because the persistence of HFOs presents the greatest challenge during clean-up and the cost increases exponentially as the grade of oil increases. Sophisticated clean-up strategies are required for spills of more persistent oils, which to date has involved application of oil dispersants, and mechanical and manual recoveries. Responses to spills of persistent oils that are near shorelines can result in prolonged and laborious shoreline clean-up responses.⁸

- 2.7 The NIA cites a number of recent examples of discharges of HFOs in Antarctic seas. For example, spills of HFOs have occurred from cruise vessels the *Explorer* in 2007, and the *Ciudad de Ushuaia* in 2008.⁹ Ships carrying HFOs continue to sail in the region.¹⁰

3 Resolution MEPC.117(52), *Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Annex 2, Article 11.

4 NIA, para. 14.

5 Resolution MPEEC.189(60) *Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973*, Chapter 9, Regulation 43, Article 1.

6 NIA, para. 16.

7 NIA, para. 8.

8 NIA, para. 8.

9 NIA, para. 7.

10 NIA, para. 7.

Impact on Australia

- 2.8 Australia has demonstrated leadership in many areas of 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 marine environment protection is, in part, due to its heavy reliance on the international maritime industry to underpin its international trade.¹¹
- 2.9 The Amendment will provide Australia with the legislative authority to enforce the ban on the carriage of HFOs in the Australian Antarctic Territory. This will require amendments to Australia's *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.¹²
- 2.10 The Australian Maritime Safety Authority (AMSA) will enforce the new measure through its usual processes of port inspections, including monitoring of the oil record book required to be kept on board vessels, and liaising with international partners to ensure that ships registered in other countries are complying with the new standards.¹³
- 2.11 According to AMSA, if the revised Annex I of MARPOL was not implemented in Australia, there would be a risk that the level of environmental protection in Australia would fall short of internationally adopted standards. That may encourage ships carrying HFOs to operate unregulated in the Antarctic Area, which could have significant financial and environmental long-term effects for Australia. Rejection of the amendments would also undermine Australia's standing and influence in the international community regarding the protection of Antarctica's environment.¹⁴

Impact on the Australian Antarctic Division

- 2.12 The Australian Antarctic Division, which is part of the Department of Sustainability, Environment, Water, Population and Communities,

11 NIA, para. 10.

12 NIA, para. 15.

13 NIA, paras 12, 15, & Mr Paul Nelson, Australian Maritime Safety Authority (AMSA), Manager, Marine Environment Standards, Marine Environment Division, *Committee Hansard*, 20 June 2011, p. 3.

14 NIA, para. 12.

administers the Australian Antarctic Territory, and is the major Australian presence in the Antarctic.¹⁵

- 2.13 The Division strongly supports the measures introduced under the Resolution. Nevertheless, implementation of the Resolution will have some operational and budgetary implications for its work.¹⁶
- 2.14 The research vessel chartered by the Division, the *RSV Aurora Australis*, already uses light fuel, and is therefore compliant. Also, Australia's stations in the Antarctic are compliant. However, the Division also contracts Russian flagged vessels to provide logistic support, involving supply and waste removal for its Australian Arctic Program. These vessels are large, specialised, ice-strengthened cargo vessels which operate on intermediate fuel oil, which will be banned under the amending Resolution.¹⁷
- 2.15 However, the Division advised the Committee that the fleet of ice-strengthened cargo vessels is nearing 30 years old, which is the usual end of a ship's life. The Divisions expects to see a change over in this fleet to modern, compliant vessels in the next five years.¹⁸
- 2.16 The Division is currently commissioning scoping studies to assess its medium to long-term shipping needs. The consultation report notes that any new vessels will be engineered to comply with the Resolution.¹⁹
- 2.17 In the short term, the NIA consultation report notes the risk that Australia may damage its reputation as a lead nation under MARPOL if it continues to contract available non-compliant Russian ships.²⁰

Submission relating to Port Phillip Bay

- 2.18 The Committee received a submission which proposed that the area covered by the Amendment should be extended to 38 degrees south latitude, which is the northern point of Western Port, Victoria. The

15 Australian Antarctic Division < <http://www.antarctica.gov.au/about-us> > viewed 26 July 2011.

16 NIA, Consultation attachment, paras. 27, 28.

17 NIA, Consultation attachment, paras. 29, 30.

18 Mr Bryson, Australian Antarctic Division, *Committee Hansard*, Canberra, 20 June 2011, p. 5.

19 NIA, Consultation attachment, para. 33.

20 NIA, Consultation attachment, para. 34.

submission's intent was to extend protection to the roosting and foraging sites of the Phillip Island penguins.²¹

- 2.19 In response, AMSA argued that the different physical environment near the Australian continent meant that any HFO spill would not present the same degree of threat as in Antarctica, and that Australia has the capacity to deal with such a situation:

...the selection of 60 degrees is recognition that the situation is in the Antarctic, where the extreme weather condition, extreme cold, is a unique situation when you have a spill involving heavy fuel oil.

...responding to spills of heavily fuel oil in Australia waters is obviously... not something we would choose to do, but if there is an oil spill near Australia involving heavy fuel oil, we do not have the same problems that we do in the Antarctic. We can get to it, we have a national response plan in place that we can respond to incidents around the Australian coast. So [it is] a very different situation anywhere near Australia.²²

Conclusion

- 2.20 The Committee recognises the importance of the proposed amendments and supports their incorporation into the existing Treaty.
- 2.21 However, the Committee is concerned that a large proportion of vessels operating in Antarctic waters will be exempt from the prohibition on the basis that they are operated by governments. AMSA should monitor the number of exempt ships carrying HFOs in the region to see whether the provisions of the exemption need tightening.
- 2.22 While the Committee notes that the Australian Antarctic Division is one of the few institutions significantly affected, it also notes that the Division fully supports the amendments so as to provide greater protection to the Antarctic environment.

21 *Submission 2*, Maurice Schinkel, p. 1.

22 Mr Paul Nelson, Australian Maritime Safety Authority, Manager, Marine Environment Standards, Marine Environment Division, *Committee Hansard*, 20 June 2011, p. 2.

Recommendation 1

The Committee supports *Resolution MEPC.189(60), Adopted on 26 March 2011: Amendments to the Annex of the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships, 1973* and recommends that binding treaty action be taken.