

**National Interest Analysis [2015] ATNIA 10
with attachment on consultation**

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

**Amendment to MARPOL Annex I
RESOLUTION MEPC.256(67)
Adopted at London on 17 October 2014
[2015] ATNIF 18**

**Amendment to MARPOL Annex III
RESOLUTION MEPC.257(67)
Adopted at London on 17 October 2014
[2015] ATNIF 19**

**Amendments to the Annex of the *Protocol of 1997 to Amend the International
Convention for the Prevention of Pollution from Ships, 1973, as modified by the
Protocol of 1978 relating thereto***

**Amendments to MARPOL Annex VI
RESOLUTION MEPC.258(67)
Adopted at London on 17 October 2014
[2015] ATNIF 20**

Regulation Impact Statements

Not required by the Office of Best Practice Regulation - Reference ID 19085

**NATIONAL INTEREST ANALYSIS
SUMMARY PAGE**

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Nature and timing of proposed treaty action

1. The *International Convention for the Prevention of Pollution from Ships* as modified by the *Protocol of 1978* and the *Protocol of 1997* ('MARPOL') is one of the key international instruments addressing the problem of marine pollution from ships. MARPOL contains six (6) technical Annexes dealing with, respectively: oil; noxious liquid substances in bulk; harmful substances in packaged form; sewage; garbage; and air pollution. MARPOL is administered by the International Maritime Organization ('IMO'), a specialised agency of the United Nations. The IMO Committee with responsibility for MARPOL is the Marine Environment Protection Committee ('MEPC').
2. The 67th session of MEPC ('MEPC 67') held in London from 13 to 17 October 2014 adopted the following Resolutions (together, 'the Amendments'):
 - (a) **Resolution MEPC. 256(67)**, containing the text of an amendment to MARPOL Annex I ('First Resolution');
 - (b) **Resolution MEPC. 257(67)**, containing the text of an amendment to MARPOL Annex III ('Second Resolution'); and
 - (c) **Resolution MEPC. 258(67)**, containing the text of amendments to MARPOL Annex VI ('Third Resolution').

3. The Amendments were adopted in accordance with the amendment procedure set out in **Article 16** of MARPOL and, unless Australia lodges an objection, will be deemed accepted by Australia under the deemed acceptance provision of **Article 16 (2)(f)**.
4. Under **Article 16 (2)(f)**, the Amendments will be deemed accepted by all IMO Member States on **1 September 2015** unless, prior to that date, not less than one third of the Parties or Parties 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.
5. Having regard to the Parliamentary sitting pattern and the fact that this treaty action relates to both major (Category 1) amendments and consequential amendments which will need to be considered prior to the deemed acceptance date, the Department of Infrastructure and Regional Development ('Department') seeks an expedited JSCOT Hearing.
6. The amendments will automatically enter into force for all Member States that have not lodged an objection on **1 March 2016** in accordance with **Article 16 (2)(f)**.

Overview and national interest summary

First Resolution

7. MARPOL **Annex I** contains regulations for the prevention of pollution by oil. If Australia does not lodge any objection, the First Resolution will amend **Regulation 43** of **Annex I** to clarify that the prohibition of the carriage of heavy grade oil ('HGO') in bulk as cargo or carriage and use as fuel in the Antarctic also applies to the carriage of HGO as ballast. In practice, the banning of HGO generally means that ships in the Antarctic areas are restricted to the carriage and use of marine diesel oil, marine gas oil or lighter intermediate fuel oil blends. There are limited exceptions for emergency situations, such as search and rescue, and for residues from previous carriage or use.
8. **Regulation 43** was originally developed and adopted in 2010 in response to concerns raised by IMO Members at the 28th Antarctic Treaty Consultative Meeting regarding the potentially high environmental impacts from a spill of HGO in the Antarctic, which would be challenging for IMO Members to address and costly to remediate. **Resolution MEPC. 189 (60)** (adopted on 26 March 2010), previously considered by JSCOT in August 2011, added **Regulation 43** – Special Requirements for the use or carriage of oils in the Antarctic Area to **Annex I** to MARPOL. **JSCOT Report 118** recognised the importance of the **Regulation 43** amendment proposed by **Resolution MEPC.189 (60)** and recommended that Australia take binding treaty action. **Regulation 43** entered into force on 1 August 2011.
9. In 2014, the MEPC was made aware that a fishing vessel had sunken in Antarctic waters while carrying HGO in its ballast tanks for later use as fuel once the ship had left the Antarctic area (a ballast tank assists with ship stability and would ordinarily hold water). The flag State of this vessel did not take any remedial action, as they interpreted **Regulation 43** in **Annex I** to MARPOL as not extending to HGO carried as ballast. The MEPC concluded that this interpretation is inconsistent with the original intent of **Regulation 43**, to minimise the presence of HGO in the Antarctic Area to the maximum extent practicable.

10. Accordingly, the proposed amendment to **Regulation 43** in **Annex I** to MARPOL closes a loophole that exposed the Antarctic area, including the Australian Antarctic Territory, to potential environmental damage from HGO carried as ballast.

Second Resolution

11. **Annex III** of MARPOL regulates harmful substances carried by sea in packaged form. **Annex III** requires harmful substances, which currently includes radioactive material, to be packaged and labelled to a particular standard. If Australia does not lodge an objection, the Second Resolution will exclude radioactive materials from the scope of the 'harmful substance' criteria' and instead add a footnote referring the user to the section of the *International Maritime Dangerous Goods* ('IMDG') *Code* (2014 Edition - available for purchase on the IMO website) that deals with radioactive materials.
12. The Second Resolution represents a consequential amendment to MARPOL that gives effect to a decision made at the May 2014 meeting of the IMO Maritime Safety Committee ('MSC') to ensure harmonisation with the *United Nations Recommendations on the Transport of Dangerous Goods, Model Regulations* (18th revised edition, 2013). The amendment ensures harmonisation with decisions of other UN bodies in relation to codes for the transport of dangerous goods by rail, road and internal waterways.
13. Under MARPOL, harmful substances fall into one of two categories: those substances which are identified as marine pollutants in the IMDG Code ('first category') and those substances which meet certain criteria set out in the Appendix to MARPOL **Annex III** ('second category'). Amendments made to the IMDG Code through the MSC mean that radioactive materials no longer fall within the first category. This amendment to the IMDG Code has been applied by IMO Members on a voluntary basis from **1 January 2015** and will enter into force on **1 January 2016**. The Second Resolution amends **Annex III** to MARPOL so that radioactive materials are also excluded from the second category.
14. The effect of the amendment to **Annex III** under the second Resolution is that MARPOL regulations relating to the carriage of radioactive material in packaged form will no longer apply to IMO Member States. This will remove requirements for handling and transporting dangerous goods already dealt with under the IMDG Code and will not impact safety or environmental outcomes, as the carriage of radioactive materials will still be regulated under the IMDG Code.
15. In summary, the second Resolution if accepted by Australia will help to harmonise the international legal regimes governing the transport of dangerous goods, will clarify their application to Australia and simplify compliance burdens.

Third Resolution

16. **Annex VI** of MARPOL contains regulations for the prevention of air pollution from ships and includes **Appendix I**, Form of *International Air Pollution Prevention* ('IAPP') *Certificate* (**Regulation 8**).
17. The Third Resolution will extend the application of **Regulation 13** of MARPOL **Annex VI**, which regulates the emission of nitrogen oxides ('NO_x'), to gas fuelled ships built on or after **1 March 2016**. The third Resolution also makes minor amendments to the IAPP Certificate to clarify existing requirements and to give effect to previous MEPC decisions.

18. The changes adopted to **Regulations 2 and 13** under the third Resolution will mean that engines fuelled solely by gaseous fuels will be required to comply with NOx emission requirements set out in **Regulation 13** of MARPOL **Annex VI**. The decision to include gas-fuelled ships in the amendment was not controversial at the MEPC. Consideration of single-fuel gas fuelled ships arose in a correspondence group established by MEPC to look at various technologies that were available to meet the Tier III NOx standards. The correspondence group found that several compliant gas fuelled engine models had been in operation for up to 20 years. No Australian ships will be affected by the amendment.
19. Dual-fuel ships (i.e. those that use diesel pilot injection to ignite the gas fuel) are already covered by **Annex VI** to MARPOL, because the diesel element brings them within the existing definition. *Supplement to the IAPP Certificate* – The IAPP Certificate is a document required to be carried by all ships of 400 gross tonnes and above on international voyages. It is issued by the ship's flag State and certifies that the ship's equipment, systems, fitting, arrangements and material comply with certain regulations under MARPOL **Annex VI**.
20. The proposed minor amendments to the IAPP Certificate were brought to the MEPC by the *International Association of Classification Societies* ('IACS') and a major flag State, the Marshall Islands. The Australian position at the MEPC was to support the proposal, and the amendments were agreed by the MEPC without controversy.
21. There are 178 Australian flagged vessels that have an IAPP Certificate. The proposed amendments under this third Resolution involve minor adjustments in the way compliance with a small number of IMO regulations is recorded. The changes will improve transparency by making it easier to relate the documentation on board the ship to specific MARPOL requirements, allowing shipowners and flag State Administrators to more easily verify that compliance is being achieved by these ships.
22. The amendments proposed by this third Resolution are not expected to have a regulatory impact in Australia. The changes are machinery in nature and reflect previous MEPC decisions. The changes should lead to more easily understood requirements, less mistakes and quicker verification.
23. In summary, these amendments under the third Resolution extend NOx regulations to an additional category of vessels, make requirements easier to understand and should result in more efficient verification of compliance by Australian authorities.

Reasons for Australia to take the proposed treaty action

24. 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.

First Resolution

25. The amendment to **Annex I** of MARPOL proposed by the first Resolution will close a loophole that has been identified in relation to the carriage of HGO in Antarctic waters, brought to the attention of the IMO by the sinking of a foreign flagged vessel in the

Antarctic Area that was carrying HGO as ballast. The amendment to **Regulation 43** will ensure that the text clearly reflects the intent of the State Parties to MARPOL.

26. The proposed amendment will provide Australia with the legislative authority to enforce a more comprehensive ban on the carriage of HGOs in the Australian Antarctic Territory. Implementation of Australia's international obligations under the proposed amendment to **Annex I** of MARPOL will require the passing of domestic legislation to amend the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.
27. The Australian Maritime Safety Authority ('AMSA') will enforce the new measure through its usual processes of port State control, including liaising with international partners to ensure that ships registered in other countries are complying with the standards.
28. If the revised **Regulation 43** under **Annex I** of MARPOL is rejected by Australia, there is a risk that the level of environmental protection required by Australia will fall beneath internationally adopted standards. That may encourage ships carrying HGO in bulk as cargo in ballast tanks to operate without penalty in the Antarctic Area. In the event of a HGO spill, this could have significant environmental long-term effects and financial impacts for Australia, if part of the international pollution response effort. Rejection of the amendments would also undermine Australia's standing and influence in the international community regarding the protection of Antarctica's environment. For these reasons, Australia does not propose to lodge any objection to the proposed amendments under the first Resolution.

Second Resolution

29. The proposed amendment to **Annex III** to MARPOL under the second Resolution will remove a duplicated requirement for labelling radioactive material in packaged form. The requirements will be removed from MARPOL but the requirements contained in the IMDG Code will still apply. This is a consequential amendment to give effect to an earlier decision of MSC. For these reasons, Australia does not propose to lodge any objection to the proposed amendments under the second Resolution.

Third Resolution

30. Requiring gas fuelled ships to comply with MARPOL **Annex VI** was considered to be non-controversial by the MEPC. Dual-fuel ships are already included in **Annex VI** and gas fuelled ships are already regulated by other parts of MARPOL. In addition, there is clear evidence that the technology required for such ships to comply exists (compliant gas fuelled engines have been identified as being in operation for up to 20 years). This amendment is likely to have no regulatory burden on Australian ships. While the requirements would only apply to ships built on or after **1 March 2016**, there are no current Australian-flagged gas-fuelled ships and Australian shipping peak bodies did not identify any compliance issues for their members.
31. The changes proposed to the IAPP Certificate improve transparency so that flag State Administrators can more easily verify that compliance is being achieved on their ships. The amendments are machinery in nature and reflect previous MEPC decisions. Australia does not propose to lodge any objection to the proposed amendments under the third Resolution.

Obligations

32. The proposed treaty action would mandate the below requirements at international law.

First Resolution

33. The proposed amendment to **Regulation 43** of **Annex I** to MARPOL will ensure that the original intent of the Parties to MARPOL is given effect by explicitly banning the carriage of HGO in bulk as cargo in ballast tanks in the Antarctic Area.

Second Resolution

34. Under the second Resolution, **Annex III** to MARPOL would be amended to exclude radioactive materials from the scope of **Annex III**'s regulations for the prevention of pollution by harmful substances carried by sea in packaged form. Such material is already regulated by the IMDG Code.

Third Resolution

35. Under the third Resolution, amendments would be effected to **Regulations 2, 8 and 13** of **Annex VI** to MARPOL. **Regulation 2** of **Annex VI** defines a number of terms and would be amended to change the definition of: *fuel oil* to include gas; and *marine diesel engine* to include a gas fuelled engine constructed after **1 March 2016**.

36. **Regulation 13** in **Annex VI** would be amended to clarify the documentation of engines' compliance with NOx emission standards.

37. These amendments will require ships built on or after **1 March 2016** that use engines fuelled solely by gaseous fuels to comply with **Annex VI**'s requirements for NOx emissions.

38. The supplement to the IAPP Certificate, which is **Appendix I** under **Annex VI** to MARPOL and is required to be carried by ships of 400 gross tonnes and above on international voyages, would be amended to: reflect the amendment to **Regulation 13**; require clear documentation of the length of a recreational vessel to assist in identifying its NOx emissions obligations; and recognise the updated Standard Specification for Shipboard Incinerators 2014, which was adopted by MEPC in 2014 (**MEPC.244 (66)**).

Implementation

First Resolution

39. In order to implement the amendments to MARPOL effected by the first Resolution in Australian law, a minor amendment is required to the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983*.

Second and third Resolutions

40. No legislative change is required in order to effect the content of the second and third Resolutions in Australian law. The amendments will automatically be given effect under the current legislative framework.

Costs

41. The Office of Best Practice Regulation advised the Department that Regulation Impact Statements are not required for any of the three Resolutions, because the changes they affect are considered to be of a minor nature from its perspective. There is not expected to be any additional cost for Australian businesses as a result of the amendments under each Resolution.

Future treaty action

42. Any future amendments to MARPOL (including the Protocols and Annexes) must be effected in accordance with the amendment procedures set out in MARPOL (**Article 16** – Convention, **Article VI** – 1978 Protocol and **Article 4** – 1997 Protocol).
43. **Article 16** contains various amendment mechanisms, including amendment after consideration by the IMO (**Article 16(1)**) and amendment by a Conference (**Article 16(2)**). Various ‘deemed acceptance’ procedures for amendment after consideration by the organisation are set out in Article 16(2) (f), with specific conditions for entry into force set out in **Article 16(2)(g)**. The Parties may lodge a declaration of acceptance or objection to an amendment with the Secretary General of the IMO (**Article 16(9)**).
44. Any future amendments to MARPOL will constitute a treaty action and therefore be subject to completion of Australian domestic legal and treaty requirements prior to entry into force.

Withdrawal or denunciation

45. MARPOL does not contain any specific provision for withdrawal by States Parties. Under **Article 56(1)** of the Vienna Convention on the Law of Treaties, a treaty which does not provide for withdrawal is not subject to withdrawal unless it is established that the parties intended to admit the possibility of withdrawal or a right of withdrawal may be implied by the nature of the treaty. Any future withdrawal from MARPOL by Australia would be subject to domestic treaty action requirements.
46. Under **Article 14** of MARPOL, **Annexes III, IV and V** are deemed ‘Optional Annexes’. MARPOL and any of its Optional Annexes may be denounced by any Parties to the Convention at any time after the expiry of five (5) years from the date on which the Convention or such Annex enters into force for that Party (**Article 18** and **Article VII**).
47. As **Annex I** is not an Optional Annex, it may not be denounced by any Party to MARPOL, including Australia, except in conjunction with a general denunciation of MARPOL.
48. **Annex VI** was added by the 1997 Protocol to MARPOL ([2007] ATS 37) and contains parallel procedures and conditions for denunciation to those set out in the 1978 Protocol. Under **Article 7** of the 1997 Protocol, the Protocol (including **Annex VI**) may be denounced by any Party at any time after the expiry of five years from the date on which the Protocol enters into force for that Party.
49. Denunciation under either Protocol is effected by deposit of an instrument of denunciation with the Secretary-General of the IMO (**Article VII (2)** 1978 Protocol, **Article 7(2)** 1997 Protocol). Any denunciation would take effect 12 months after the Secretary General receives the notification of denunciation or after the expiry of any

longer period indicated in the notification. Denunciation of MARPOL is also deemed to be a denunciation of the 1997 Protocol and **Annex VI**.

50. Any decision to denounce MARPOL under either the 1978 Protocol (**Articles 18 and VII**) or the 1997 Protocol (**Article 7**) would be subject to Australia's domestic treaty action requirements, including tabling and consideration by the Joint Standing Committee on Treaties.

Contact details

Maritime Safety and Environment Section
Surface Transport Policy Division
Department of Infrastructure and Regional Development

ATTACHMENT ON CONSULTATION

RESOLUTION MEPC.256 (67), RESOLUTION MEPC.257 (67), and RESOLUTION MEPC.258 (67)

Adopted at London on 17 October 2014

Amendments to the Annex of the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 and Amendments to the Annex of the Protocol of 1997 to Amend the International Convention for the Prevention of Pollution from Ships, , 1973, as modified by the Protocol of 1978 relating thereto

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CONSULTATION

1. Consultation during the development of the proposed amendments to the Protocol of 1978 and the Protocol of 1997 relating to *the International Convention for the Prevention of Pollution from Ships 1973* (MARPOL) under MEPC Resolutions 256-258 (67) was undertaken with a number of industry organisations. The Department of Infrastructure and Regional Development, through the Australian Maritime Safety Authority ('AMSA'), has a history of good positive engagement with industry. Consultation on these amendments primarily occurred with the following peak industry bodies:
 - (a) **Maritime Industry Australia Limited** ('MIAL'): MIAL represent Australian companies who 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. ASA 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 shipping, container, passenger and tramp trades.
 - (c) **International Chamber of Shipping** ('ICS'): ICS is an international shipping industry NGO and is the principal international trade association for merchant shipowners and operators, representing all sectors and trades and over 80% of the world's merchant fleet.
 - (d) **Cruise Lines Industry Association** ('CLIA'): CLIA is an international shipping industry NGO and is the world's largest cruise industry association with representation in North and South America, Europe, Asia and Australasia.
 - (e) **Australian Antarctic Division** ('AAD'): AAD is a Division of the Australian Government Department of the Environment and is responsible for leading Australia's Antarctic Program.

RESOLUTION MEPC.256 (67)

2. AMSA consulted with several industry stakeholders; Orion Expeditions, Ocean Expeditions and P&O Maritime Services on **Resolution MEPC. 256 (67)**. Comments were received from Orion Expeditions and P&O maritime services, with neither organisation raising any concerns regarding this amendment. The ICS and CLIA both voiced their support for the amendment at the MEPC 67 Meeting. MIAL is a member of ICS. The Parties and NGOs that spoke to this issue at the MEPC Meeting in October 2014 were supportive of the amendment. The only debate raised at that

Meeting was regarding how best to close the loophole in **Regulation 43** of Annex I. When **Regulation 43** was originally considered by the IMO, the AAD was consulted by AMSA and confirmed that the *Antarctic Treaty* [1961] ATS 12 Member States (including Australia) intended to minimise to the extent possible the presence of HGO in the Antarctic area. The Department of Agriculture confirmed that the carriage of HGO in ballast tanks was not a practice that they were aware of with regard to Australian vessels.

RESOLUTION MEPC.257 (67)

3. AMSA undertook consultation with its stakeholders with regard to the IMDG Code Amendment decided by the MSC in 2014. MIAL and SAL supported the approval of the IMDG Code Amendment (37-14) including consistency with the UN requirements to harmonise the requirements for multi-modal transport of dangerous goods.
4. Australian delegations have supported the adoption of **Resolution MEPC 257 (67)** and other related decisions taken by IMO meetings with respect to this matter.

RESOLUTION MEPC.258 (67)

5. MIAL and SAL were consulted by AMSA on the content of **Resolution MEPC 258 (67)** and on the proposal to extend the application of **Annex VI** to gas fuelled ships. Neither of these organisations expressed any concerns.
6. The minor amendments to the IAPP Certificate were supported at the MEPC 67 Meeting and were agreed without controversy from flag States or NGOs. The changes that the Resolution effects to **Annex VI** were regarded as mechanical in nature and no specific consultation was conducted by AMSA on this part of **Resolution MEPC 258 (67)**, however AMSA advises stakeholders of documents under consideration at all IMO meetings, so the opportunity to comment was provided to its stakeholders.