

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

Introduction

- 2.1 On 13 October 2011, the *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*, was tabled in the Commonwealth Parliament.
- 2.2 The proposed amendments provide greater protection for an area that is particularly vulnerable to pollution by sewage.¹ 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

1 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 (Hereafter referred to as 'NIA'), paras 6-8.

any ship will travel through that special area as part of a voyage to or from Australia.² There are also no current plans to establish a special area off the Australian coast.³

Background

- 2.3 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.⁴
- 2.4 The proposed amendments to Annex IV of MARPOL will result in a reduction of the amount of sewage discharged into the Baltic Sea area. 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.⁵

Overview and national interest summary

- 2.5 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) 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. 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.⁶
- 2.6 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 the

2 NIA, para 13.

3 Ms Poy Aye Tan, Section Head, Maritime Policy, Maritime Policy Reform Branch, Department of Infrastructure and Transport, *Committee Hansard*, 21 November 2011, p. 1.

4 NIA, para 1.

5 NIA, para 5.

6 NIA, paras 2-3.

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 amendments. Upon acceptance, the amendments will enter into force on 1 January 2013.⁷

Reasons for Australia to take the proposed treaty action

- 2.7 Acceptance of the amendments is consistent with Australia's long-standing support for protection of the marine environment and also our active backing of, and participation in meetings of, the IMO. In addition, acceptance is in accordance with Australia's general obligations as a Party to the United Nations Convention on the Law of the Sea 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.⁸

Obligations

- 2.8 The requirements of Annex IV apply only to ships engaged in international voyages; 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 break-up 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 the IMO requirements by the administration of the State in which the ship is registered; or
 - the discharge is carried out using a sewage break-up 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.
- 2.9 The 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 The IMO after the

7 NIA, para 4.

8 NIA, paras 6-8.

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 ships which come under Australian jurisdiction and which are operating in a special area are equipped with approved sewage treatment and/or holding facilities. The amending legislation will also apply to passenger ships within any future special area established off the Australian coast and to Australian passenger ships in special areas beyond Australia's exclusive economic zone.⁹ There are consequential amendments to the form of the International Sewage Pollution Prevention Certificate, which are set out in the Appendix to Annex IV.

- 2.10 The designation of the Baltic Sea area as a special area for purposes of Annex IV is aimed at the passenger ships which carry high 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). 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.
- 2.11 The Baltic Sea has been designated as a special area as it is one of the most intensively trafficked sea areas in the world. There has been a significant increase in passenger and cruise traffic, 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.¹⁰

Implementation

- 2.12 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

9 Ms Poy Aye Tan, Section Head, Maritime Policy, Maritime Policy Reform Branch, Department of Infrastructure and Transport, *Committee Hansard*, 21 November 2011, p. 1.

10 NIA, paras 9-14.

unlikely to have any effect on ships over which Australia has jurisdiction there will be few, if any, administrative or enforcement requirements.¹¹

Costs

- 2.13 The proposed amendments will not result in any increased costs or savings to the Australian Government or to the States and Territories.¹²

Australian implications

- 2.14 Although the treaty is specific to the Baltic Sea, the Committee was interested in what implications there are for Australia and Australian waterways.

- 2.15 'Special Areas' for Australian waters can only be proposed by Australia in consultation with other neighbouring countries if the waters are close to those neighbouring countries. Further, no other country can apply for the listing of Australian territorial waters as 'Special Areas'.¹³ The Australian Maritime Safety Authority explained:

Australia could propose any special areas anywhere in Australian waters. If those areas were close to a neighbouring state, say Papua New Guinea or Indonesia, we would have to involve those countries in the negotiations and put in a joint submission to the International Maritime Organisation. So, yes, probably Papua New Guinea, Indonesia and potentially New Zealand, but anywhere else in Australia if there were no impact or if the area we were proposing was not likely to impact on any of our neighbours then we could put in a submission on our own.¹⁴

- 2.16 The Australian Maritime Safety Authority also explained that the Great Barrier Reef effectively enjoys the same protections that a 'Special Area' would confer upon it:

At the moment the Great Barrier Reef, for example, already has an equivalent requirement for this because the whole of the Great Barrier Reef is considered to be 'nearest land' for the purposes of MARPOL. So, if a ship intends to dispose of sewage, say, 12 nautical miles from the nearest land they can only do that 12

11 NIA, para 15.

12 NIA, para 16.

13 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 21 November 2011, p. 2.

14 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 21 November 2011, p. 2.

nautical miles from the outer edge of the reef. So the Great Barrier Reef, if you like, is already protected, and has been since the early 1980s, to an equivalent level of this.¹⁵

Conclusion

- 2.17 The proposed amendments to Annex IV of MARPOL will result in a reduction of the amount of sewage discharged into the Baltic Sea area, and this is a positive outcome for the maritime environment. Although amendments are expected to have no impact on Australia, they set a positive precedent for continued improvements in the international management of the world's oceans.
- 2.18 The Committee notes the implications for Australia and Australian waterways and views them as generally positive – particularly with regard to Australia's right to declare parts of its own territorial waters to be 'Special Areas' as part of the MARPOL agreement. The Committee is also encouraged that the Great Barrier Reef is covered to the same level as a 'Special Area' under existing regulations.
- 2.19 The Committee supports the amendments and recommends that binding treaty action be taken.

Recommendation 1

The Committee supports the *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* and recommends that binding treaty action be taken.

15 Mr Paul Nelson, Manager, Marine Environment Standards, Marine Environment Division, Australian Maritime Safety Authority, *Committee Hansard*, 21 November 2011, p. 2.