

EXPLANATORY NOTES
Marine Orders Part 98: Marine Pollution — Anti-fouling Systems
Issue 1

Order No 8 of 2008

Purpose

1. Marine Orders Part 98 — Marine Pollution — Anti-fouling Systems gives effect to all or part of Articles 3, 4 and 10 of the *International Convention on the Control of Harmful Anti-fouling Systems on Ships, 2001* ('the AFS Convention') and Annex 4 to the AFS Convention which provide for controls on anti-fouling systems, and the survey, inspection and certification of ships in relation to those systems.
2. The Marine Order prescribes various matters, such as survey and certification requirements and forms to be used to report incidents, for the purposes of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* ('the AFS Act').

Power

3. Section 24 of the AFS Act empowers orders to be made on any matter for which regulations may be made other than the imposition of penalties for the contravention of an order.
4. Section 25 of the AFS Act provides that regulations may be made prescribing matters:
 - (a) required or permitted by the AFS Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to the AFS Act;
and, in particular:
 - (c) for and in relation to giving effect to the AFS Convention, other than provisions of the AFS Convention to which effect is given by a provision of the AFS Act; and
 - (d) prescribing penalties not exceeding 30 penalty units for a contravention of the regulations.

Consultation

5. In addition to providing a copy of the draft Marine Orders Part 98, Issue 1, on AMSA's website, a copy was provided to the following organisations for comment:
 - American Bureau of Shipping;
 - Australian Shipowners Association;
 - Bureau Veritas;
 - China Classification Society;

- Department of Infrastructure, Transport, Regional Development and Local Government;
- Det Norske Veritas;
- Germanischer Lloyd;
- Lloyd's Register;
- National Maritime Safety Committee;
- Nippon Kaiji Kyokai;
- Shipping Australia Limited.

Overview

12. The purpose of the AFS Convention is to ban the use of organotin compounds, and in particular tributyl tin. These compounds act as biocides in anti-fouling paints on ships. Anti-fouling systems are used to prevent the growth, or attachment, of algae, barnacles and other marine organisms on a ship's hull. Anti-fouling systems enable a ship to travel faster through the water, thus reducing fuel consumption.
13. Organotin-based compounds, which have been used since the 1970s, have been found to have a significant detrimental effect on marine life and ecosystems. The detrimental effects of these compounds have been observed in marine organisms including oysters and molluscs. Contamination of sediments has also been found in many ports around the world. Concerns have been raised regarding the impact of tributyl tin on those communities who consume large quantities of seafood in their diet.
14. The AFS Convention requires State Parties to restrict or prohibit the use of harmful anti-fouling systems on: (i) ships entitled to fly their flag; (ii) ships not entitled to fly a State Party's flag that operate under the authority of a Party; and (iii) all other ships that enter the port, shipyard or offshore terminal of a Party.
15. The AFS Convention defines 'ship' broadly to include vessels of any type operating in the marine environment including hydrofoil boats, air-cushion vessels, submersibles, floating craft, fixed or floating platforms, floating storage units and floating production storage and offloading units.
16. Annex 4 to the AFS Convention sets out survey and certification requirements for anti-fouling systems for ships that are: (i) 400 gross tonnage or more which engage in overseas voyages; and (ii) ships that are 24 metres or more in length, but less than 400 gross tonnage, which engage on international voyages.
17. Ships that are 400 gross tonnage or more which engage in overseas voyages must be surveyed and issued with an international anti-fouling certificate. If a ship's anti-fouling system is changed or replaced, the certificate must be endorsed.

18. Ships that are 24 metres or more in length, but less than 400 gross tonnage, which engage on international voyages must carry a 'Declaration on Anti-fouling System' accompanied by other relevant documentation, such as a paint receipt, contractor's invoice or an appropriate endorsement.
19. Under the AFS Convention, a certificate ceases to be valid for 2 reasons. Firstly, if the ship's anti-fouling system is changed or replaced, and the certificate is not endorsed in accordance with the AFS Convention, and secondly, if the ship transfers to the flag of another State. In the second situation, the originating State is encouraged to provide the receiving State with the relevant documentation, in respect of the ship, as soon as practicable.
20. The AFS Convention enters into force on 17 September 2008.
21. In Australia ratification of the AFS Convention is achieved through the AFS Act. The operative provisions of the AFS Act commence on 17 September 2008.
22. The AFS Act prohibits the application of harmful anti-fouling compounds on an Australian ship or a foreign ship in an Australian shipping facility. From 1 January 2008, it is an offence to permit a ship (other than a 'pre-2003 exempt platform') to enter a port, shipyard or offshore terminal which does not comply with the Act's anti-fouling requirements.
23. The AFS Act also:
 - prescribes matters relevant to the form and cancellation of an anti-fouling certificate and anti-fouling declaration; and
 - empowers regulations to be made in relation to the obligation on a master and owner to notify of a 'happening' that may affect a ship's compliance with the Act's anti-fouling requirements.
24. Proposed Marine Orders Part 98 gives effect to the survey and certification requirements as well as the reporting obligations set out in the AFS Convention and AFS Act.

Contents of the Order

25. **Provision 1** indicates the purpose of the Marine Order, and the power of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* ('the AFS Act') that is relied on to make the Marine Order.
26. **Provision 2** provides an interpretation of the words and phrases used for a proper understanding of the Marine Order. The provision also advises readers that words and phrases used in the AFS Act or AFS Convention have the same meaning in that Act or Convention as they do in the Marine Order. A note lists the words and phrases that are defined in the Act which are of relevance to the Marine Order.
27. **Provision 3** specifies the ships to which this Marine Order applies.

28. **Provision 4** provides for an internal review of a decision made by the Manager, Ship Inspections under this Marine Order by the General Manager. An internal review decision by the General Manager must include a statement of reasons. This provision also provides for a review by the Administrative Appeals Tribunal of a decision made by the General Manager under this Marine Order.
29. **Provision 5** prescribes the form of International Anti-fouling System Certificate ('anti-fouling certificate') that is to be issued by a survey authority for an Australian ship. This form is Form 98/1 and is set out in Appendix 1 to the Marine Order. The provision also mentions when a survey authority must endorse an anti-fouling certificate and how the certificate is to be endorsed. A survey authority endorses an anti-fouling certificate by completing the section of Form 98/1 called 'Endorsement of the Records'. This provision is made for the purposes of subsections 10 (1) and 10 (2) of the AFS Act.
30. **Provision 6** specifies the methods of serving notices that may be used when an anti-fouling certificate is cancelled. This provision is made for the purposes of paragraphs 12 (3) (b) and 12 (5) (c) of the AFS Act.
31. **Provision 7** requires that a cancelled anti-fouling certificate must be given to the Manager, Ship Inspections. This provision is made for the purposes of paragraph 12 (4) (a) of the AFS Act.
32. **Provision 8** requires the master of an Australian ship whose compliance with the anti-fouling requirements is, or may be, affected by 'a happening' must complete Form 98/2 and send the form to the Manager, Ship Inspections within 7 days. Form 98/2 is set out in Appendix 1 to the Marine Order. This provision is made for the purposes of paragraph 14 (1) (c) of the AFS Act.
33. **Provision 9** prescribes the form of anti-fouling declaration for an Australian ship. This form is Form 98/3 and is set out in Appendix 1 to the Marine Order. This provision is made for the purposes of subsection 15 (5) of the AFS Act.
34. **Appendix 1** sets out the forms mentioned in provisions 5, 8 and 9. These are: (i) the 'International anti-fouling certificate'; (ii) the 'Notice of alteration or damage to an Australian ship'; and (iii) the 'Declaration on anti-fouling system'.

Documents incorporated by reference

35. The *International Convention on the Control of Harmful Anti-fouling Systems on Ships*, 2001 may be purchased from:

International Maritime Organization (IMO)

Address: 4 Albert Embankment, London SE1 7SR, United Kingdom

Telephone: + 44 (0)20 7735 7611

Fax: + 44 (0)20 7587 3210.

IMO website: <http://www.imo.org>

Boat Books

31 Albany Street, Crows Nest, NSW 2065 - telephone (02) 9439 1133;

214 St Kilda Road, St Kilda, VIC 3182 - telephone (03) 9525 3444;

109 Albert Street, Brisbane, QLD,4000 – telephone (07) 3229 6427;

E-mail: boatbks@boatbks.com.au

Australian Maritime Safety Authority
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