

Explanatory Statement

Marine Order 98 (Marine pollution — anti-fouling systems) 2013 (Order 2013/13)

Authority

1. Subsection 10(1) of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (the AFS Act) provides for the prescribing of a form for the issue of anti-fouling certificates.
2. Subsection 10(2) of the AFS Act provides for the endorsement of an anti-fouling certificate in accordance with the regulations. Endorsement is required to continue in force a ship's current anti-fouling certificate.
3. Paragraphs 12(3)(b) and 12(5)(c) of the AFS Act provide for service of documents in accordance with the regulations for certain matters relating to the cancellation of anti-fouling certificates.
4. Paragraph 14(1)(c) of the AFS Act provides that notice must be given in accordance with the regulations of happenings which could affect a ship's compliance with anti-fouling requirements.
5. Subsection 15(5) of the AFS Act provides that a form may be prescribed for an **anti-fouling declaration** which relates to compliance with anti-fouling requirements. Australian ships above a certain size that undertake international voyages must carry an anti-fouling declaration.
6. Section 24 of the AFS Act provides that the Australian Maritime Safety Authority (AMSA) may make orders on any matter on which regulations may be made.
7. Paragraph 25(c) of the AFS Act provides for regulations to be made to give effect to the International Convention on the Control of Harmful Anti-fouling Systems on Ships (the Convention).
8. This Order was made under section 24 of the AFS Act and is a legislative instrument for the *Legislative Instruments Act 2003*.

Purpose

9. This Order gives effect to the Convention by prescribing a number of matters for the AFS Act.

Overview

10. The AFS Act implements the Convention in Australia. This Order sets out a number of matters that the AFS Act left to be prescribed by regulation. Three forms are prescribed and set out in the Order. Form 1 is the anti-fouling certificate for an Australian ship. This form also provides for endorsement of the certificate to enable its continued operation. Form 2 is the form to be used to advise of the notice of a happening that might affect the ship's compliance with anti-fouling requirements. Form 3 is the form for an anti-fouling declaration. The Order also provides for the manner of service of documents that the AFS Act requires to be served.
11. The AFS Act provides for the issue of an anti-fouling certificate if, following a survey, a ship is found to comply with anti-fouling requirements. The Convention envisaged the development of Guidelines for the conduct of surveys before issuing certificates. The Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted the *2010 Guidelines for survey and certification of anti-fouling systems on ships*. The Order provides that a survey for

the issue of an anti-fouling certificate must be carried out in accordance with these guidelines.

Consultation

12. A copy of the draft of this instrument was circulated to approximately 300 stakeholders including industry organisations and interested government agencies. A list of these stakeholders may be obtained on request from AMSA. A copy of the draft was also placed on the AMSA website for public comment. Comments received from 2 stakeholders resulted in minor editorial changes to the instrument. Responses to the effect of no comment were received from 4 further stakeholders.

13. The Office of Best Practice Legislation (OBPR) was consulted on the proposed Order. OBPR considered that this Order will have machinery impacts and no further analysis (in the form of a Regulatory Impact Statement) is required (OBPR reference number 2013/14730).

Documents incorporated by reference

14. This Order incorporates by reference the *2010 Guidelines for survey and certification of anti-fouling systems on ships* adopted by IMO Resolution MEPC.195(61).

15. These guidelines and this resolution are available from the IMO website at <http://www.imo.org>. Information on obtaining copies of IMO documents is also on AMSA's website: <http://www.amsa.gov.au>.

Commencement

16. This Order commenced on the date following its registration.

Contents of this instrument

17. Section 1 sets out the name of the Order.

18. Section 2 provides for the commencement of the Order.

19. Section 3 repeals *Marine Orders Part 98, issue 1*.

20. Section 4 states the purpose of the Order which is to give effect to the Convention provisions on anti-fouling systems and to provide for surveys, certificates and forms.

21. Section 5 provides definitions of terms used in the Order.

22. Section 6 provides that the Order applies to Australian ships.

23. Section 7 provides the form of anti-fouling certificates under the AFS Act. Section 7 also provides that surveys carried out under the Act must be done in accordance with the *2010 Guidelines for survey and certification of anti-fouling systems on ships* adopted by IMO Resolution MEPC.195(61).

24. Section 8 provides for the manner of service of notice under the Act for cancellation of anti-fouling certificates.

25. Section 9 provides for the form to be used if there is a happening under the AFS Act.

26. Section 10 prescribes a form for the definition of *anti-fouling declaration* in subsection 15(5) of the AFS Act.

Statement of compatibility with human rights

27. This statement is made for subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

28. The Order prescribes a number of matters for the operation of the AFS Act. Forms are set out in the Order for anti-fouling certificates and declarations and for the notice of happenings. The manner of service of documents under the Act is provided. The Order requires that surveys for the issue of anti-fouling certificates must be conducted in accordance with the guidelines developed by the MEPC of the IMO. The Order is a replacement of an Order that was made in 2006, and there has been change to the substance of the Order.

Human rights implications

29. This instrument does not engage any of the applicable rights or freedoms.

Assessment

30. This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Making the instrument

31. This instrument has been made by the Chief Executive Officer of the Australian Maritime Safety Authority, in accordance with subsection 49(4) of the *Australian Maritime Authority Act 1990*.