

Explanatory Statement

Marine Order 98 (Marine pollution — anti-fouling systems) 2023 (Order 2023/1)

Authority

1. Paragraph 25(a) of the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (AFS Act) authorises the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed
2. Paragraph 25(b) of the AFS Act provides for regulations to be made prescribing matters necessary or convenient for carrying out or giving effect to the Act.
3. Paragraph 25(c) of the AFS Act provides for regulations to be made prescribing matters to give effect to the International Convention on the Control of Harmful Anti-fouling Systems on Ships (Anti-fouling Convention), other than provisions of the Convention to which effect is given by the Act.
4. Section 24 of the AFS Act allows the Australian Maritime Safety Authority (AMSA) to make Marine Orders on any matter on which regulations may be made.
5. Subsection 33(3) of the *Acts Interpretation Act 1901* provides that a power in an Act to make a legislative instrument includes the power to repeal or amend the instrument, subject to any conditions that apply to the initial power.
6. This Marine Order is made under section 24 of the AFS Act and is a legislative instrument for the *Legislation Act 2003*.

Purpose

7. This Marine Order repeals and replaces *Marine Order 98 (Marine pollution — anti-fouling systems) 2013*.
8. The purpose of this Marine Order is to give effect to Australia's international obligations in relation to anti-fouling systems on ships. For this reason, the Marine Order is exempt from sunseting under item 1, section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015*.

Overview

9. The AFS Act implements Australia's international obligations under the Anti-fouling Convention. Marine Order 98 is made under the AFS Act to prescribe a number of matters for the Act. These include the form of certificates, endorsements and declarations required by the AFS Act, guidelines that must be followed in the conduct of ship surveys, service of notices and the giving of notice of happenings to AMSA.

Consultation

10. A copy of the draft of this Marine Order was placed on AMSA's website on 28 November 2022 for public consultation with comments to be provided by 8 January 2023. Around 350 stakeholders were contacted by email and invited to comment. These included vessel operators, recognised organisations, shipping and cargo industry bodies, seafarer representative organisations and relevant government agencies.
11. Two submissions were received, one concerning the Australian availability of anti-fouling products containing cybutryne, a banned substance under the AFS Act, and the other concerning the timing of new measures under the AFS Act. These submissions were considered during the preparation of the final Marine Order.
12. The Office of Impact Analysis (OIA) considers that the changes made by the Marine Order have regulatory impacts of a minor or machinery nature and no

regulation impact statement is required. The OIA reference numbers are 16724 and 43657.

Documents incorporated by reference

13. The following documents or parts of them are incorporated by reference in the Marine Order:

- Anti-fouling Convention
- *2022 Guidelines for survey and certification of anti-fouling systems on ships* adopted by IMO Resolution MEPC.358(78) (2022 Guidelines).

14. The Anti-fouling Convention is of treaty status and is incorporated as in force at the time of making of this Marine Order. Resolution MEPC.331(76), adopted on 17 June 2021, attached to the Convention a new form for the *International Anti-fouling System Certificate*. The form is also available on the AMSA website at <http://www.amsa.gov.au>. The Anti-fouling Convention can be found in the Australian Treaties Series, accessible from the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>. A link to the Australian Treaties Library is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>. The Marine Orders link on the AMSA website also contains information on the purchase of the Anti-fouling Convention and its availability at libraries.

15. The 2022 Guidelines are available in IMO Resolution MEPC.358(78). The Guidelines are incorporated as existing at the time of making of this Marine Order. IMO Resolutions are available to download from the IMO website at no cost. A link to IMO resolutions is available at the Marine Orders link on the AMSA website at <http://www.amsa.gov.au>.

Commencement

16. This Marine Order commenced on 1 March 2023.

Contents of this instrument

Division 1 — Preliminary

17. Division 1 contains seven provisions that assist the operation, interpretation and administration of the Marine Order.

18. Section 1 sets out the name of the Marine Order.

19. Section 1A states that the Marine Order commences on 1 March 2023.

20. Section 1B repeals *Marine Order 98 (Marine pollution — anti-fouling systems) 2013*.

21. Section 2 states the purpose of the Marine Order, which is to prescribe matters for the AFS Act and gives effect to survey requirements under the Anti-fouling Convention.

22. Section 3 sets out the powers in the AFS Act that enable the Marine Order to be made.

23. Section 4 sets out definitions of terms used in the Marine Order.

24. Section 5 provides that the Marine Order applies to an Australian ship.

Division 2 — Matters for the AFS Act

25. This Division contains 4 provisions and prescribes matters for the AFS Act and provides for the use of guidelines for surveys required to be conducted for certification of ships under the Act.

26. Section 6 prescribes the form for an anti-fouling certificate and the form of endorsement to the certificate. It also makes provision for the conduct of surveys for the issue of anti-fouling certificates under the Act.

27. Section 7 provides for the service of notices required under the AFS Act.

28. Section 8 prescribes how notice of a happening must be given to AMSA. The AFS Act requires notice be given if something that happens to a ship may affect compliance with anti-fouling requirements.

29. Section 9 prescribes for the AFS Act the form of an anti-fouling declaration. The AFS Act requires that an Australian ship 24 metres or longer, and with a gross tonnage of less than 400, must have on board an anti-fouling declaration if the ship goes on an international voyage to or from a shipping facility.

Statement of compatibility with human rights

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

Overview of the legislative instrument

31. The *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (AFS Act) implements Australia's international obligations under the International Convention on the Control of Harmful Anti-fouling Systems on Ships. Marine Order 98 is made under the AFS Act to prescribe a number of matters for the Act. These include the form of certificates, endorsements and declarations required by the AFS Act, guidelines that must be followed in the conduct of ship surveys, service of notices and the giving of notice of happenings to the Australian Maritime Safety Authority.

Human rights implications

32. The provisions of Marine Order 98 do not engage any of the rights and freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Conclusion

33. AMSA considers that this instrument is compatible with human rights. It does not affect any rights or freedoms to which the *Human Rights (Parliamentary Scrutiny) Act 2011* applies.

Making the instrument

34. 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 Safety Authority Act 1990*.