



MARINE ENVIRONMENT PROTECTION
COMMITTEE
60th session
Agenda item 6

MEPC 60/6/4
18 December 2009
Original: ENGLISH

INTERPRETATIONS OF, AND AMENDMENTS TO, MARPOL AND RELATED INSTRUMENTS

Regional arrangements for port reception facilities

Submitted by Australia and SPREP

SUMMARY

<i>Executive summary:</i>	This document proposes amendments to MARPOL Annexes I and II to allow the obligations to provide adequate ships' waste reception facilities to be met through regional arrangements
<i>Strategic direction:</i>	7.1
<i>High-level action:</i>	7.1.3
<i>Planned output:</i>	7.1.3.2
<i>Action to be taken:</i>	Paragraphs 18, 19 and 20
<i>Related documents:</i>	MEPC 49/22; MEPC 55/9/1, MEPC 55/23; FSI 14/13/2, FSI 14/19; MEPC 58/9 and MEPC 59/24

Background

1 Resolution MEPC.83(44), Guidelines for ensuring the adequacy of port waste reception facilities, recognizes that although all States that are Party to MARPOL have an obligation to provide reception facilities for MARPOL wastes from ships calling at their ports, some port authorities may face particular problems meeting this obligation (paragraph 5.14) and that regional arrangements for port waste reception facilities can provide a solution (paragraphs 5.15-5.16).

2 In noting information provided by SPREP following a review of ship's waste reception facilities in the South Pacific region, MEPC 49 agreed generally that regional arrangements is an acceptable way to satisfy the MARPOL obligations to provide adequate reception facilities for ships and that this approach could have the potential to resolve obstacles for many countries to become Party to the MARPOL Convention (MEPC 49/22, paragraphs 13.11-13.15).

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3 Following this decision, FSI 14 considered a further submission from SPREP (FSI 14/13/2) providing information on regional waste reception facility arrangements put in place by a number of Pacific Regional Environment Programme Member States (FSI 14/19). The Sub-Committee proposed to develop both: guidelines for establishing regional arrangements for reception facilities, and an MEPC resolution recognizing regional arrangements. FSI 14 instructed the Secretariat, subject to MEPC 55's endorsement, to submit a draft MEPC resolution for consideration by FSI 15 on regional arrangements as fulfilling the obligations under the MARPOL Convention.

4 This proposed resolution was not developed – the Secretariat reviewed legal and other implications of the proposed resolution to recognize regional arrangements, and provided advice to MEPC 55 that the acceptance of regional arrangements is not in line with the current wording of MARPOL Annexes I and II, and also, to a lesser extent, the current wording of Annexes IV, V and VI (MEPC 55/9/1, paragraph 8). MEPC 55 agreed with this advice; however the Committee recognized the benefit of having such regional arrangements and agreed to recognize them as a means of providing reception facilities under MARPOL. Member States were requested to submit their views to future sessions on how regional arrangements might be better institutionalized (MEPC 55/23, paragraph 9.11).

5 Australia, the Marshall Islands, New Zealand, the United States, Vanuatu and SPREP responded to this invitation through a submission to MEPC 58 (MEPC 58/9). The principles of the document were supported by a number of delegations, and the Committee endorsed the two main elements in document MEPC 58/9:

- .1 in order to institutionalize regional arrangements for providing reception facilities, appropriate amendments should be made to the relevant MARPOL Annexes and resolution MEPC.83(44); and
- .2 until any future amendments to the relevant MARPOL Annexes are adopted and entered into force, the decision of MEPC 55 to recognize the benefit of regional arrangements as a means of providing reception facilities should continue.

With respect to developing amendments to the relevant MARPOL Annexes, Member States were invited to propose appropriate amendments to a future session of the Committee

General model for institutionalizing regional arrangements

6 It is the co-sponsors' view that amendments are needed for MARPOL Annexes I and II to allow for limited use of regional arrangements. We propose a model that allows the obligation to provide adequate reception facilities for some ports to be met through regional arrangements provided that:

- .1 a Regional Reception Facilities Plan is developed in accordance with Guidelines developed by the Organization;
- .2 the Regional Reception Facilities Plan is considered and approved by MEPC; and
- .3 the Governments of the port States participating in the Plan notify IMO for circulation to all States Party to MARPOL the details of which ports within the region are Regional Waste Reception Centres capable of receiving all types of waste and identify which ports provide only limited facilities.

7 The concept of the Regional Reception Facilities Plan is consistent with the current guidance provided by resolution MEPC.83(44), i.e.:

“5.15 Port waste management planning on a regional basis can provide a solution when it is undertaken in such a manner to ensure that vessels do not have an incentive to discharge wastes into the sea. In the development of such regional plans it is imperative that the dedicated waste storage capacity of vessels involved is sufficient to retain their wastes between ports of call. Such planning may require close collaboration between States.

5.16 In judging the adequacy of waste reception facilities at individual ports within a regional plan, States Parties to MARPOL 73/78 will need to have particular regard to the ability of all ships to discharge all of their wastes within the region.”

8 A more detailed set of guidelines should be developed addressing how countries can develop a Regional Reception Facilities Plan to satisfy their obligations and emphasizing the need to keep such arrangements under review. It is suggested that these guidelines be progressed following agreement on any amendments to MARPOL; however as a general outline, it is suggested that guidance be included on the detailed consideration of:

- .1 shipping patterns in the region, both international and domestic;
- .2 all ports in the region, including type and available facilities;
- .3 current exemptions for oil tankers operating in the region with regard to slop tanks, oil discharge monitoring systems and oil/water interface detectors granted on the proviso that these ships deliver all oily mixtures to waste reception facilities;
- .4 the nature of the unique circumstances that impact on the ability to provide adequate facilities, for example a small island State that is unable to deal properly with its own domestic waste;
- .5 identification of the selected “Regional Ships Waste Reception Centres” and inclusion of all details in GISIS; and
- .6 the need for regular review of regional arrangements to take into account changing shipping patterns, types of waste, any improvements in local waste disposal arrangements and port infrastructure, and other relevant circumstances.

9 Given the original objective of removing obstacles for countries to accede to MARPOL, it will be necessary to accept proposals for Regional Reception Facilities Plans from groups of IMO Member States which include some non-Parties to MARPOL. It will be important to outline in the proposal what steps are being/will be taken by such States towards ratifying MARPOL and how regional arrangements will contribute to these efforts. One element of the development and approval of Regional Reception Facilities Plan should be a consideration of how regional arrangements will contribute to the ability of these non-Parties to progress towards accession to MARPOL.

MARPOL Annex I

10 Regulations 38.2 and 38.3 are specific about which ports and terminals require port reception facilities outside Special Areas. It is suggested that a new provision be added to allow the requirements of these regulations to be met through regional arrangements.

11 For some ports, the co-sponsors consider that there can not be any exemption from the obligation to provide reception facilities, in particular:

- .1 oil loading ports and terminals where tankers have, immediately prior to arrival, completed a ballast voyage of not more than 72 hours or not more than 1,200 nm, require reception facilities for dirty ballast water; and
- .2 unloading ports for high density oils, asphalt and other products which through their physical properties inhibit effective product/water separation and monitoring – residues of these products must be delivered to reception facilities (regulation 2.4), and unloading ports for these products are subject to Unified Interpretation 55 requiring them to have reception facilities adequate to the purpose of receiving the residues and cleaning solvents.

12 Such ports could participate in regional arrangements provided that they are Regional Ships Waste Reception Centres.

MARPOL Annex II

13 Regulation 13.4 provides for an exemption for a prewash at the request of a ship's master to be granted by the Government of the receiving Party where it is satisfied that certain conditions are met. One of these conditions is that the unloaded tank is neither washed nor ballasted at sea and that it has been confirmed in writing that a reception facility exists for residues at another port where it is intended for the prewash to be carried out (regulation 13.4.2).

14 This regulation could be adapted to also allow the Government of the receiving Party to grant an exemption for a prewash to all tankers unloading at a particular port provided that the port is covered by a Regional Reception Facilities Plan and that Regional Ships Waste Reception Centres are identified to conduct prewashes and receive the resultant NLS residues.

15 The identification of Regional Ships Waste Reception Centres could also satisfy the requirements of regulation 13.7.1.2 for written confirmation that a reception facility in another port is available and adequate for such a purpose.

MARPOL Annexes IV, V and VI

16 The current framing of the reception facilities provisions in Annexes IV, V and VI differs from that in Annexes I and II. In contrast to the prescriptive requirements for particular ports and terminals to provide certain reception facilities in Annexes I and II, there is a more general obligation to ensure the provision of facilities at ports and terminals adequate to the needs of ships using them. It is the co-sponsors' view that this does not present a legal barrier to regional arrangements in the way that the current Annex I and II wording does. We consider that the recognition of regional arrangements as a possible solution in paragraphs 5.15 and 5.16 of resolution MEPC.83(44) provides an adequate basis for regional arrangements under Annexes IV, V and VI.

17 The incorporation of reception facilities for sewage, garbage, ozone depleting substances and exhaust gas cleaning residues into a Regional Reception Facilities Plan should be encouraged by any guidelines that are developed.

Action requested of the Committee

18 The Committee is invited to consider the proposed amendments to MARPOL Annexes I and II regarding regional arrangements for port waste reception facilities and decide as appropriate.

19 The Committee is also requested to consider the proposition that no amendments to MARPOL are required to institutionalize regional arrangements under MARPOL Annexes IV, V and VI.

20 The Committee is further invited to consider and comment on the general outline of the proposed guidelines (paragraph 8 above) and take action as appropriate. In this regard, the Committee may recall that the IMO Action Plan for Tackling the Inadequacy of Port Reception Facilities includes item 5.1 "Development of Guidelines for establishing regional arrangements for reception facilities". The Action Plan assigns responsibility for this item to the FSI Sub-Committee. Although the original completion date of 2008 has passed, there has been no work by FSI to date on item 5.1 pending progress by MEPC on institutionalizing regional arrangements.

ANNEX 1

PROPOSED AMENDMENTS TO MARPOL ANNEX I

Proposed additions to the text of regulation 38 of MARPOL's Annex I are shown underlined and within square brackets.

Regulation 38*Reception facilities***A. Reception facilities outside special areas**

1 The Government of each Party to the present Convention undertakes to ensure the provision at oil loading terminals, repair ports, and in other ports in which ships have oily residues to discharge, of facilities for the reception of such residues and oily mixtures as remain from oil tankers and other ships adequate* to meet the needs of the ships using them without causing undue delay to ships.

2 Reception facilities in accordance with paragraph 1 of this regulation shall be provided in:

- .1 all ports and terminals in which crude oil is loaded into oil tankers where such tankers have immediately prior to arrival completed a ballast voyage of not more than 72 hours or not more than 1,200 nautical miles;
- .2 all ports and terminals in which oil other than crude oil in bulk is loaded at an average quantity of more than 1,000 tonnes per day;
- .3 all ports having ship repair yards or tank cleaning facilities;
- .4 all ports and terminals which handle ships provided with the oil residue (sludge) tank(s) required by regulation 12 of this Annex;
- .5 all ports in respect of oily bilge waters and other residues, which cannot be discharged in accordance with regulations 15 and 34 of this Annex; and
- .6 all loading ports for bulk cargoes in respect of oil residues from combination carriers which cannot be discharged in accordance with regulation 34 of this Annex.

3 The capacity for the reception facilities shall be as follows:

- .1 crude oil loading terminals shall have sufficient reception facilities to receive oil and oily mixtures which cannot be discharged in accordance with the provisions of regulation 34.1 of this Annex from all oil tankers on voyages as described in paragraph 2.1 of this regulation;

* See resolution MEPC.83(44) "Guidelines for ensuring the adequacy of port waste reception facilities".

- .2 loading ports and terminals referred to in paragraph 2.2 of this regulation shall have sufficient reception facilities to receive oil and oily mixtures which cannot be discharged in accordance with the provisions of regulation 34.1 of this Annex from oil tankers which load oil other than crude oil in bulk;
- .3 all ports having ship repair yards or tank cleaning facilities shall have sufficient reception facilities to receive all residues and oily mixtures which remain on board for disposal from ships prior to entering such yards or facilities;
- .4 all facilities provided in ports and terminals under paragraph 2.4 of this regulation shall be sufficient to receive all residues retained according to regulation 12 of this Annex from all ships that may reasonably be expected to call at such ports and terminals;
- .5 all facilities provided in ports and terminals under this regulation shall be sufficient to receive oily bilge waters and other residues which cannot be discharged in accordance with regulation 15 of this Annex; and
- .6 the facilities provided in loading ports for bulk cargoes shall take into account the special problems of combination carriers as appropriate.

[3A. The requirements in paragraphs 2 and 3 may be met through regional arrangements provided that a Regional Reception Facilities Plan is developed and approved in accordance with Guidelines developed by the Organization. The Governments of the port States participating in the Plan shall notify the Organization for circulation to the Parties of the present Convention:

- .1 how the Regional Reception Facilities Plan takes into account the Guidelines;
- .2 particulars of the identified Regional Ships Waste Reception Centres; and
- .3 particulars of those ports with only limited facilities.]

B. Reception facilities within special areas

4 The Government of each Party to the present Convention the coastline of which borders on any given special area shall ensure that all oil loading terminals and repair ports within the special area are provided with facilities adequate for the reception and treatment of all the dirty ballast and tank washing water from oil tankers. In addition all ports within the special area shall be provided with adequate[†] reception facilities for other residues and oily mixtures from all ships. Such facilities shall have adequate capacity to meet the needs of the ships using them without causing undue delay.

[4A. The requirements in paragraph 4 may be met through regional arrangements provided that a Regional Reception Facilities Plan is developed and approved in accordance with Guidelines developed by the Organization. The Governments of the port States participating in the Plan shall notify the Organization for circulation to the Parties of the present Convention:

- .1 how the Regional Reception Facilities Plan takes into account the Guidelines;

[†] See resolution MEPC.83(44) "Guidelines for ensuring the adequacy of port waste reception facilities".

.2 particulars of the identified Regional Ships Waste Reception Centres; and

.3 particulars of those ports with only limited facilities]

5 The Government of each Party to the present Convention having under its jurisdiction entrances to seawater courses with low depth contour which might require a reduction of draught by the discharge of ballast shall ensure the provision of the facilities referred to in paragraph 4 of this regulation but with the proviso that ships required to discharge slops or dirty ballast could be subject to some delay.

6 With regard to the Red Sea area, Gulfs area, Gulf of Aden area and Oman area of the Arabian Sea:

- .1 Each Party concerned shall notify the Organization of the measures taken pursuant to provisions of paragraphs 4 and 5 of this regulation. Upon receipt of sufficient notifications the Organization shall establish a date from which the discharge requirements of regulations 15 and 34 of this Annex in respect of the area in question shall take effect. The Organization shall notify all Parties of the date so established no less than twelve months in advance of that date.
- .2 During the period between the entry into force of the present Convention and the date so established, ships while navigating in the special area shall comply with the requirements of regulations 15 and 34 of this Annex as regards discharges outside special areas.
- .3 After such date oil tankers loading in ports in these special areas where such facilities are not yet available shall also fully comply with the requirements of regulations 15 and 34 of this Annex as regards discharges within special areas. However, oil tankers entering these special areas for the purpose of loading shall make every effort to enter the area with only clean ballast on board.
- .4 After the date on which the requirements for the special area in question take effect, each Party shall notify the Organization for transmission to the Parties concerned of all cases where the facilities are alleged to be inadequate.
- .5 At least the reception facilities as prescribed in paragraphs 1, 2 and 3 of this regulation shall be provided one year after the date of entry into force of the present Convention.

7 Notwithstanding paragraphs 4, 5 and 6 of this regulation, the following rules apply to the Antarctic area:

- .1 The Government of each Party to the present Convention at whose ports ships depart en route to or arrive from the Antarctic area undertakes to ensure that as soon as practicable adequate facilities are provided for the reception of all oil residue (sludge), dirty ballast, tank washing water, and other oily residues and mixtures from all ships, without causing undue delay, and according to the needs of the ships using them.

- .2 The Government of each Party to the present Convention shall ensure that all ships entitled to fly its flag, before entering the Antarctic area, are fitted with a tank or tanks of sufficient capacity on board for the retention of all oil residue (sludge), dirty ballast, tank washing water and other oily residues and mixtures while operating in the area and have concluded arrangements to discharge such oily residues at a reception facility after leaving the area.

C. *General requirements*

- 8 Each Party shall notify the Organization for transmission to the Parties concerned of all cases where the facilities provided under this regulation are alleged to be inadequate.

ANNEX 2

PROPOSED AMENDMENTS TO MARPOL ANNEX II

Proposed additions to the text of regulation 18 of MARPOL's Annex II are shown underlined and within square brackets.

Regulation 18*Reception facilities and cargo unloading terminal arrangements*

1 The Government of each Party to the Convention undertakes to ensure the provision of reception facilities according to the needs of ships using its ports, terminals or repair ports as follows:

- .1 Ports and terminals involved in ships' cargo handling shall have adequate facilities for the reception of residues and mixtures containing such residues of Noxious Liquid Substances resulting from compliance with this Annex, without undue delay for the ships involved.
- .2 Ship repair ports undertaking repairs to NLS tankers shall provide facilities adequate for the reception of residues and mixtures containing Noxious Liquid Substances for ships calling at that port.

2 The Government of each Party shall determine the types of facilities provided for the purpose of paragraph 1 of this regulation at each cargo loading and unloading port, terminal and ship repair port in its territories and notify the Organization thereof.

3 The Governments of Parties to the Convention, the coastlines of which border on any given special area, shall collectively agree and establish a date by which time the requirement of paragraph 1 of this regulation will be fulfilled and from which the requirements of the applicable paragraphs of regulation 13 in respect of that area shall take effect and notify the Organization of the date so established at least six months in advance of that date. The Organization shall then promptly notify all Parties of that date.

4 The Government of each Party to the Convention shall undertake to ensure that cargo unloading terminals shall provide arrangements to facilitate stripping of cargo tanks of ships unloading Noxious Liquid Substances at these terminals. Cargo hoses and piping systems of the terminal, containing Noxious Liquid Substances received from ships unloading these substances at the terminal, shall not be drained back to the ship.

[4A The requirements in paragraphs 1 to 4 may be met through regional arrangements provided that a Regional Reception Facilities Plan is developed and approved in accordance with Guidelines developed by the Organization. The Governments of the port States participating in the Plan shall notify the Organization for circulation to the Parties of the present Convention:

- .1 how the Regional Reception Facilities Plan takes into account the Guidelines;
- .2 particulars of the identified Regional Ships Waste Reception Centres; and
- .3 particulars of those ports with only limited facilities.]

5 Each Party shall notify the Organization, for transmission to the Parties concerned, of any case where facilities required under paragraph 1 or arrangements required under paragraph 3 of this regulation are alleged to be inadequate.
