

SUB-COMMITTEE ON POLLUTION
PREVENTION AND RESPONSE
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Agenda item 5

PPR 2/5/3
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**GUIDELINES FOR PORT STATE CONTROL UNDER THE 2004 BWM CONVENTION,
INCLUDING GUIDANCE ON BALLAST WATER SAMPLING AND ANALYSIS**

**Comments on issues on regulations A-3 and A-4 of the Ballast Water Management
Convention (exceptions and exemptions)**

Submitted by Croatia, Denmark, Singapore, ICS and INTERFERRY

SUMMARY

Executive summary: This document comments on document MEPC 67/2/12 as referred to PPR 2 on the issues on regulations A-3 and A-4 of the Ballast Water Management Convention (exceptions and exemptions). The co-sponsors seek further clarifications of certain terms in the Convention and its Guidelines (G7). Furthermore, the co-sponsors propose to develop (practical) criteria for the risk assessment under the exemptions in accordance with regulation A-4, in order to make clear guidance for the Administration, but if possible also evaluate, the use of regulation A-3 (same location), that according to Guidelines (G3) shall be taken to mean the same harbour, mooring or anchorage, without compromising the risk. These practical criteria should be used to secure acceptable low risk operation of exempted ships on the basis of a risk assessment and provide better coherence between regulations A-3 and A-4.

Strategic direction: 2

High-level action: 2.0.1

Planned output: 2.0.1.2

Action to be taken: Paragraph 24

Related documents: MEPC 47/2; MEPC 48/2; MEPC 49/INF.6; MEPC 67/2/12 and MEPC 67/INF.23

Background

1 This document is submitted in accordance with the provisions of paragraph 6.12.5 of the *Guidelines on the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies*

(MSC-MEPC.1/Circ.4/Rev.3), and provides comments on document MEPC 67/2/12 on issues on regulations A-3 and A-4 of the Ballast Water Management Convention (exceptions and exemptions).

2 The Sub-Committee will recall that Parties to the International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004 (the Convention) may grant exceptions and exemptions in accordance with regulations A-3 and A-4 of the Convention.

3 In essence, exceptions and exemptions can be given as per the following:

- .1 for ships where the purpose is to ensure the safety of the ship in emergency situations or saving life at sea (A-3);
- .2 for discharge of ballast water from a ship at the same location (A-3); and
- .3 for a ship on a voyage or voyages between specified ports or locations (A-4).

4 The use of exceptions and exemptions in the Convention shall not be done by a Party if doing so would impair or damage their environment, human health, property or resources, or those of adjacent or other States.

5 To assist Parties in the consistent application of exemptions in accordance with the provisions of regulation A-4, the *Guidelines for risk assessment under regulation A-4 of the Convention (G7)* were developed and adopted by resolution MEPC.162(56). In accordance with regulation A-4.1.4 of the Convention, exemptions may be granted when they are based on Guidelines (G7).

6 When reviewing the discussions leading up to the 2004 adoption of the Convention, it is clear to the co-sponsors that, except for domestic operations, the original intention of exceptions and exemptions has not in full been captured by the Convention and its Guidelines (G7).

7 It was, for example, noted during MEPC 46 that the expression "at the same location" in regulation A-3(5) should be specified (paragraph 3.19 of document MEPC 46/2).

8 During MEPC 47 it was noted again that the phrase "at the same location" might need further specification. Denmark suggested the wording "within the same hydrographical regime" (footnote 19 of the annex to document MEPC 48/2).

9 During the second Intersessional Meeting of the MEPC Ballast Water Working Group it was agreed to retain in regulation A-3 the phrase "at the same location" (paragraph 2.38 of document MEPC 49/2/3). Furthermore footnote 19, including the wording "within the same hydrographical regime" as suggested by Denmark, was struck out from the draft Convention (MEPC 49/INF.6).

10 Also, other relevant issues do not seem to have been reflected in a practical manner in the Convention. For example, the MEPC 53 Correspondence Group's report to BLG 10 noted that:

"The majority of the Correspondence Group participants supported the need for a biogeographical scheme to be recommended to provide for a consistent biogeographical approach when considering risk assessment."

11 Even though Guidelines (G7) (for regulation A-4 exemptions) do introduce the term "biogeographic region", which is described as a "large natural region defined by physiographic and biologic characteristics within which the animal and plant species show a high degree of similarity", the utilization on part of Parties concerned is not very clear.

12 Guidelines (G7) (paragraph 6.2.3) state that: "It is recognized that the suggested biogeographical scheme may not be appropriate in certain circumstances and in this case other recognized biogeographical schemes may need to be considered."

Discussion

13 It is clear that the term "at the same location" is not clearly defined. A definition of the concept is offered in the *Guidelines for ballast water management equivalent compliance (G3)* (paragraph 5.2) where it means the same harbour, mooring or anchorage. As a general definition the co-sponsors find it too narrow. Furthermore, the concept in this interpretation becomes superfluous as a consequence of article 3(2)(c-d) in the Convention. To the co-sponsors this was not the intention. Concurrently the co-sponsors are of the view that the intention of the Convention was not to leave the term "at the same location" subject to different interpretations, as the extension of such a location would vary on a case-by-case basis and would render global management of ballast water difficult.

14 It is also clear that different "biogeographical schemes" may be utilized in relation to exemptions and the Guidelines are open to interpretation, noting in (paragraph 8.4):

"...the criteria or scientific methods used in defining and delimiting the biogeographic regions shall be presented if a scheme other than that recommended in paragraph 6.2.3 is used."

15 In light of the above, the co-sponsors argue that some important elements of the Convention have not been properly catered for, leading to uncertainties on part of both flag Administrations, port States and ship operators.

16 In order to provide clarification, the co-sponsors believe that the terms "at the same location" and "biogeographic region" could be further developed, but appreciate that there are certain challenges with a retrospective discussion, especially considering the long ratification process of the Convention.

17 In accordance with article 3.2 (b) and (c), the Convention does not apply to ships on domestic voyages unless the Party determines that such an exclusion would impair or damage their environment, human health, property or resources – in their own or in adjacent waters. There is no requirement for the Party to undertake a certain risk assessment in such a case.

18 As there is no scientific link between spread of invasive species and national borders, building on the approach in article 3.2 (b) and (c), it could therefore be argued that Parties should also have been given the mandate to exclude ships on voyages within the "same risk area" or introduce an application for a common risk assessment for a "same risk area" under regulation A-4.

Proposals

19 The co-sponsors propose that the original intent of the term "biogeographic region" should be further explored. In order to avoid having to re-open the Convention and to be able to better capture recent scientific knowledge, it is proposed that the term "same risk area" is introduced.

20 Furthermore, the co-sponsors propose to develop (practical) criteria for the risk assessment under the A-4 exemptions, in order to provide clear guidance for the Administration, but if possible also evaluate the use of the regulation A-3 same location, that according to Guidelines (G3) shall be taken to mean the same harbour, mooring or anchorage, without compromising the risk. These practical criteria should be used to secure acceptable low risk operation of ships exempted in accordance with regulation A-4 on the basis of a risk assessment and a better coherence between regulations A-3 and A-4.

21 Another approach could be to allow for two (or more) Parties to designate a "same risk area" for defined water areas falling within the jurisdiction of any designating Party, where discharge of ballast water and sediments would not impair or damage their environment, human health, property or resources, or those of other Parties.

22 It could also be considered that within a "same risk area", Parties may agree to adopt other measures than those outlined in the Convention; for example to limit the quantity of ballast water discharge for a given ship, or to request the ship to undertake ballast water exchange.

23 Finally, it is proposed to establish a correspondence group to further assess and develop measures to expand on the original intent for a better coherence between regulations A-3 and A-4 of the Convention.

Action requested of the Sub-Committee

24 The Sub-Committee is invited to consider the proposals above in paragraphs 18 to 22 and take action as appropriate.
