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**EVALUATION AND HARMONIZATION OF RULES AND GUIDANCE ON THE
DISCHARGE OF DISCHARGE WATER FROM EGCS INTO THE AQUATIC
ENVIRONMENT, INCLUDING CONDITIONS AND AREAS**

**Comments on document PPR 13/7/2 regarding the proposal for new draft amendments
to MARPOL Annex VI concerning the protection of Particularly Sensitive Sea Areas
(PSSAs) from exhaust gas cleaning system (EGCS) discharge water**

Submitted by ICS, BIMCO and CLIA

SUMMARY

Executive summary: This document comments on the proposal to introduce a mechanism enabling Parties to apply a uniform exhaust gas cleaning system (EGCS) discharge restriction through the Particularly Sensitive Sea Areas (PSSAs) framework. The co-sponsors support global, evidence-based regulation of EGCS discharges and consider that the proposed mechanism for introducing such restrictions in PSSAs is not consistent with the IMO framework for PSSA designation, associated protective measures (APM) and UNCLOS provisions.

*Strategic direction, 1
if applicable:*

Output: 1.23

Action to be taken: Paragraph 10

Related documents: MEPC 81/9; PPR 13/7/2, PPR 13/7/4; resolutions A.982(24) and MEPC.340(77).

Introduction

1 This document is submitted in accordance with paragraph 6.12.5 of 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.5/Rev.6) and comments on document PPR 13/7/2 (Austria et al). It provides an industry perspective on the proposal to amend regulation 4 of MARPOL Annex VI to give Parties the ability to restrict the discharge of EGCS wash water within any designated Particularly Sensitive Sea Areas (PSSAs) as an additional associated protective measure (APM), given the recognized vulnerability of PSSAs and the already established mechanisms to protect these sea areas.

Discussion

2 The co-sponsors consider that the proposal in document PPR 13/7/2 to amend regulation 4 of MARPOL Annex VI to enable Parties to a designated PSSA to jointly impose restrictions on EGCS discharges, notwithstanding the acceptance of EGCS as an equivalent compliance method by the flag State, is inconsistent with the *Revised guidelines for the identification and designation of PSSAs* (resolution A.982(24), as amended by resolution MEPC.267(68)) (IMO PSSA Guidelines) and departs from the established procedures regarding establishment of APMs. The co-sponsors wish to highlight that, under the IMO PSSA Guidelines, PSSAs are not intended to operate as generic environmental protection zones or instruments for general policy objectives. Rather, they are designated on a case-by-case basis on the strength of clearly defined ecological, socio-economic, cultural, or scientific and educational attributes, and only where a location-specific vulnerability to identified international shipping activities has been demonstrated. While it is recognized that an identified vulnerability may be addressed by one or more APMs, each APM must be directly linked to, and justified by, the particular vulnerability identified for that PSSA, ensuring that the measure is a tailored solution, that is proportionate and necessary to address the documented risk to a specific area. Consequently, in the view of the co-sponsors, the APM and the requirements for it should be developed first before deciding on whether it is appropriate to use in a particular PSSA. The co-sponsors would like to highlight that development and adoption of an APM and its specific measures and procedures for establishment should be the first step, only then should relevant Parties consider if it is appropriate for use in specific PSSAs consistent with paragraph 1.2 of resolution A.982(24).

3 Existing PSSA designations illustrate this principle clearly. By way of example, the Western European Waters PSSA (resolution MEPC.121(52)) was designated primarily due to a demonstrated vulnerability to navigational risks associated with exceptionally dense shipping traffic in the English Channel and its approaches and on the basis of the ecological and cultural significance of certain coastal areas and islands in the area. The APM adopted for that PSSA, a mandatory ship-reporting system established pursuant to SOLAS regulation V/11 which enhances navigational safety, was selected precisely because it addresses the particular risks identified. It is also important to note that no measures concerning air emissions or water discharges were proposed, underscoring that APMs must be tailored to the unique vulnerabilities of each area and form part of the underlying justification for the designation.

4 The co-sponsors are concerned that the proposal in document PPR 13/7/2 would effectively establish a mechanism to introduce a uniform APM available in all PSSAs without consideration of the area-specific justification for each PSSA as required under the IMO PSSA Guidelines. The co-sponsors note that many PSSAs, including those designated primarily for navigational safety reasons (e.g. traffic separation schemes within PSSAs), have purposes that vary widely and do not involve identified vulnerabilities related to EGCS discharges. Introducing an EGCS discharge ban through the proposed PSSA mechanism in such cases would therefore create regulatory inconsistency and operational complexity, as the APM would bear no relation to the risks for which the PSSA was designated. Moreover, applying such a restriction without a PSSA-specific risk and impact assessment on the discharge water from EGCS, as per the *2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems* (MEPC.1/Circ.899), would set a precedent for imposing new discharge limitations on ships that are compliant (and whose EGCS discharges are continuously monitored to verify compliance) with the discharge water quality criteria in section 10 of the *2021 Guidelines for Exhaust Gas Cleaning Systems* (resolution MEPC.340(77)). The co-sponsors are concerned that this approach would alter the nature of the PSSA framework by disconnecting APMs from the specific vulnerabilities the PSSAs were established to address and, in practice, risk shifting PSSAs away from their intended function as targeted, risk-based designations and transforming them into general pollution-control areas unconnected to the scientific rationale on which their designation was founded, thereby undermining the integrity of the PSSA framework as set out in the IMO PSSA Guidelines.

5 The co-sponsors note that the proposal in document PPR 13/7/2 sets out a process for restrictions on the discharge of discharge water from EGCS to be adopted in PSSAs through consultation with IMO and the subsequent notification and circulation of local or regional measures. However, this process does not reflect the requirements set out in the IMO PSSA Guidelines, which recommend that, in order for an APM to be adopted, it must be supported by PSSA-specific documentation demonstrating, inter alia, how the APM is appropriate for the particular vulnerability identified in the area concerned. Under paragraph 7.10 of the IMO PSSA Guidelines, all new APMs must be formally submitted to, examined by, and approved by IMO to ensure alignment with the scientific and evidentiary basis for the PSSA's designation. The co-sponsors are therefore concerned that the mechanism proposed in document PPR 13/7/2 would instead facilitate the introduction of an APM without this submission and approval, thereby bypassing key procedural safeguards in the PSSA process. Furthermore, by relying solely on consultation and subsequent notification, there would be a shift in the responsibility for determining APMs from IMO to groups of Parties to a particular PSSA. This would allow APMs to be introduced outside the established PSSA approval process, increasing the risk of fragmented and inconsistent regional regulations which undermine the harmonized application of MARPOL Annex VI and introduce regulatory uncertainty for global shipping.

6 Any APM must be consistent with international law, as reflected in the United Nations Convention on the Law of the Sea (UNCLOS). Depending on the maritime zone in which a PSSA is located, this includes respecting the right of innocent passage in the territorial sea (Articles 17 to 21 of UNCLOS) and freedom of navigation in the EEZ (Articles 58, 87, and 90 of UNCLOS). The co-sponsors emphasize that any APM that imposes operational restrictions on ships must therefore be assessed to ensure that it does not impair these rights or exceed the jurisdictional limits applicable in the maritime zone concerned. The co-sponsors also urge the Sub-Committee to take into account the existing legal advice regarding the regulation of discharge water from EGCS as provided in documents MEPC 81/9 and LEG/MISC.8 (Secretariat) when considering this matter.

7 The co-sponsors further note that UNCLOS, Article 211(6) sets clear limits on coastal State rights to adopt discharge-related APMs for the prevention, reduction and control of pollution from vessels, specifying that such measures may not relate to the design, construction, manning or equipment of foreign ships unless giving effect to generally accepted international rules and standards. A new EGCS discharge restriction related APM introduced through the mechanism proposed in document PPR 13/7/2 would therefore need to give effect to an internationally applicable standard. Otherwise, it would fall outside the scope of coastal State prescriptive jurisdiction as defined in Article 211(6) and referenced in the IMO PSSA Guidelines.

8 Finally, the co-sponsors note that regulation 4 of MARPOL Annex VI is a general regulation that applies to the Annex as a whole. Permissible equivalent means of compliance as described in regulation 4 are not isolated to EGCS. As such, any regulation specific to EGCS would require a separate regulation.

Summary

9 In light of the above, the co-sponsors consider that the proposal in document PPR 13/7/2, which would enable Parties to introduce a uniform EGCS discharge restriction through the PSSA framework, would:

- .1 contradict, with the purpose of PSSAs as set out in the IMO PSSA Guidelines, that any APM must be directly linked to the area-specific vulnerabilities and scientific rationale underpinning each designated PSSA;
- .2 contradict the procedures in the IMO PSSA Guidelines, i.e. consideration of establishment of an APM prior to inclusion in any PSSA;
- .3 retroactively alter the scope of existing PSSAs and their APMs without any PSSA-specific risk and impact assessment, as per MEPC.1/Circ.899;
- .4 circumvent the procedures set out in the IMO PSSA Guidelines, including the need for a PSSA-specific submission, formal consideration, and approval by IMO;
- .5 be inconsistent with UNCLOS protecting innocent passage (Articles 17 to 21 of UNCLOS) and freedom of navigation (Articles 58, 87 and 90 of UNCLOS), and exceed the limits on coastal State prescriptive jurisdiction for discharge-related APMs under Article 211(6) of UNCLOS; and
- .6 overlook the general nature of regulation 4 by isolating permissible equivalents to EGCS.

Action requested of the Sub-Committee

10 The Sub-Committee is invited to note the concerns set out in this document, and take action as appropriate.
