

AMSA REGULATORY CONSULTATION

Draft Marine Order 98 (Marine pollution – anti-fouling systems) Amendment Order 2022 is open for internal consultation until 8 January 2023

We invite you to make comment on this draft Amendment Order by using the following link:

[Have your say – make a submission](#)

Who does this Order apply to?

Marine Order 98 (MO98) deals with the prevention of pollution from anti-fouling systems and gives effect to the International Convention on the Control of Harmful Anti-fouling Systems on Ships (the AFS Convention). MO98 applies to regulated Australian vessels, domestic commercial vessels, and recreational vessels.

What are the key changes?

In 2021, the IMO adopted resolution MEPC.331(76), which amends the AFS Convention to introduce controls on anti-fouling systems which contain cybutryne and update the form of the International Anti-fouling System Certificate (IAFS Certificate). The new controls will prohibit all ships from applying or re-applying anti-fouling systems which contain cybutryne. Ships that have pre-existing anti-fouling systems that contain cybutryne will be required to either remove the anti-fouling system or apply a coating to prevent cybutryne leaching at the next scheduled renewal of the anti-fouling system after 1 January 2023, but no later than 60 months following that last application of an anti-fouling system containing cybutryne. These requirements for pre-existing anti-fouling systems will apply to all ships except:

- Fixed and floating platforms, floating storage units (FSUs), and floating production storage and offtake units (FPSOs) constructed before 1 January 2023 which have not been in dry-dock on or after 1 January 2023; and
- Ships not engaged in international voyages.

To implement the ban on cybutryne use in anti-fouling systems within Australia, amendments will be required to the *Protection of the Sea (Harmful Anti-fouling Systems) Act 2006* (the HAFS Act) to add cybutryne to the list of controlled or banned substances. Amendments to the HAFS Act will be managed by the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA).

In June 2022, the IMO also adopted resolution MEPC.358(78), which updates the *Guidelines for Survey and Certification of Anti-fouling Systems on Ships* to reflect the new controls on cybutryne.

The main changes to MO98:

- Removes the form of the International Anti-fouling System Certificate IAFS Certificate so it can be updated and published on the AMSA website;
- Removes the form of the Notice of Alteration or Damage to an Australian Ship so that it can be published on the AMSA website;
- Removes the form of the Declaration on Anti-fouling System so that it can be published on the AMSA website; and
- Replaces the reference to the *2010 Guidelines for survey and certification of anti-fouling systems on ships* with reference to the *2022 Guidelines for survey and certification of anti-fouling systems*, which were adopted in June 2022 through IMO Resolution MEPC.358(78).

Commencement

It is intended that the updated *Marine Order 98 (Marine Pollution – anti-fouling systems) 2023* will commence on **1 March 2023**.

The table below compares sections in the current MO98 and the relevant amendments applicable to those sections including any new section added by the Amendment Order.

All changes proposed through the review are yellow highlighted.

Deleted texts from the current MO98 are shown as ~~strikethrough~~.

Marine Order 98 (Marine pollution – anti-fouling systems) 2013	Draft Marine Order 98 (Marine pollution – anti-fouling systems) Amendment Order 2022	Notes on changes
Division 1 Preliminary..... 3 1 Name of Order..... 3 3 2 Commencement..... 3 3 Repeal of <i>Marine Orders Part 98, issue 1</i> 3 4 Purpose..... 3 5 Definitions..... 3 6 Application..... 3 Division 2 Documents..... 4 7 Issue and endorsement of anti-fouling certificates..... 4 8 Cancellation of anti-fouling certificates — service of notices..... 4 9 Notices of happenings for Australian ships..... 4 10 Anti-fouling declaration..... 4 Schedule 1 Forms..... 5	Division 1 Preliminary 3 1 Name of Marine Order 3 1A Commencement..... 3 1B Repeal of <i>Marine Order 98 (Marine pollution — anti-fouling systems) 2013</i> 3 2 Purpose 3 3 Power 3 4 Definitions 3 5 Application 4 Division 2 Matters for AFS Act..... 4 6 Anti-fouling certificates 4 7 Cancellation of anti-fouling certificates — service of notices 4 8 Notices of happenings 4 9 Anti-fouling declarations 4	Updated the table of contents as necessary
Division 1 Preliminary	Division 1 Preliminary	
1 Name of Order This Order is <i>Marine Order 98 (Marine pollution — anti-fouling systems) 2013</i> .	1 Name of Marine Order This Marine Order is <i>Marine Order 98 (Harmful anti-fouling systems) 2023</i> . 1A Commencement This Marine Order commences on 1 March 2023. 1B Repeal of Marine Order 98 (Marine pollution — anti-fouling systems) 2013 <i>Marine Order 98 (Marine pollution — anti-fouling systems) 2013</i> is repealed.	Added the word 'Marine' before the word 'Order' throughout as appropriate. Commencement date added with repealing of the current Marine Order 98.
2 Commencement This Order commences on the day after it is registered.		Modified and relocated under relevant section as appropriate

Marine Order 98 (Marine pollution – anti-fouling systems) 2013	Draft Marine Order 98 (Marine pollution – anti-fouling systems) Amendment Order 2022	Notes on changes
<p>3 Repeal of Marine Orders Part 98, issue 1 Marine Orders Part 98, issue 1 is repealed.</p>		<p>Modified and relocated under relevant section as appropriate</p>
<p>4 Purpose This Marine Order:</p> <p>(a) gives effect to those provisions of the Convention that provide for controls on anti-fouling systems and for the survey, inspection and certification of ships for those systems; and</p> <p>(b) prescribes survey and certification requirements and forms to be used to report happenings.</p>	<p>2 Purpose This Marine Order prescribes matters for the <i>Protection of the Sea (Harmful Anti-fouling Systems) Act 2006</i> (AFS Act) and gives effect to survey requirements under the International Convention on the Control of Harmful Anti-fouling Systems on Ships (Convention).</p>	<p>Reference to certification requirements removed as MO98 does not prescribe matters for the issue of anti-fouling certificates</p>
	<p>3 Power (1) The following provisions of the AFS Act provide for this Marine Order to be made:</p> <p>(a) paragraph 25(a) which provides for regulations to be made prescribing matters required or permitted by the Act to be prescribed;</p> <p>(b) paragraph 25(b) which provides for regulations to be made prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act;</p> <p>(c) paragraph 25(c) which provides for regulations to be made prescribing matters to give effect to the Convention, other than provisions of the Convention to which effect is given by the Act.</p> <p>(2) Section 24 of the AFS Act provides that AMSA may make Marine Orders about matters on which regulations may be made.</p>	<p>Powers provisions added</p>
<p>5 Definitions In this Order:</p> <p>AMSA means the Australian Maritime Safety Authority established by the Australian Maritime Safety Authority Act 1990.</p> <p>anti-fouling system has the meaning given by the Convention.</p> <p>Note 1 Some terms used in this Order are defined in Marine Order 1 (Administration) 2013, including:</p> <ul style="list-style-type: none"> · AFS Act · IMO <p>Note 2 Other terms used in this Order are defined in the AFS Act, including:</p> <ul style="list-style-type: none"> · anti-fouling certificate · Australian ship · Convention · foreign ship · master · owner · ship 	<p>4 Definitions In this Marine Order:</p> <p>AMSA has the same meaning as Authority in the AFS Act.</p> <p><i>Note 1</i> Some terms used in this Marine Order are defined in <i>Marine Order 1 (Administration) 2013</i>, including:</p> <ul style="list-style-type: none"> • AFS Act • IMO <p><i>Note 2</i> Other terms used in this Marine Order are defined in the AFS Act, including:</p> <ul style="list-style-type: none"> • anti-fouling certificate • Australian ship • Convention • foreign ship • master • owner • ship <p><i>Note 3</i> Information on obtaining copies of any document mentioned in this Marine Order, including IMO Resolutions, is available from the AMSA website Marine Orders link at http://www.amsa.gov.au.</p>	<p>Added the word 'Marine' before the word 'Order' throughout as appropriate</p> <p>Updates to definitions as appropriate</p> <p>Definition for anti-fouling system removed as the term 'anti-fouling system' is not used anymore in the draft MO98</p>

Marine Order 98 (Marine pollution – anti-fouling systems) 2013	Draft Marine Order 98 (Marine pollution – anti-fouling systems) Amendment Order 2022	Notes on changes
<p>Note 3 The AFS Act adopts the Convention definition of ship which includes fixed or floating platforms, floating storage units (FSUs) and floating production storage and off loading units (FPSOs).</p> <p>Note 4 For information on obtaining copies of IMO documents mentioned in this Order — see AMSA's website at http://www.amsa.gov.au. These documents may also be purchased from the IMO — see the IMO website at http://www.imo.org/publications.</p>		
<p>6 Application</p> <p>This Order applies to an Australian ship.</p> <p>Note Parts 1, 2, 4 and 5 of the AFS Act apply to foreign ships. See the AFS Act for further information about the obligations, responsibilities and inspection powers mentioned in the Act that affect foreign ships.</p>	<p>5 Application</p> <p>This Marine Order applies to an Australian ship.</p> <p>Note Parts 1, 2, 4 and 5 of the AFS Act apply to foreign ships. See the AFS Act for the obligations, responsibilities and inspection powers that affect foreign ships.</p>	<p>Added the word 'Marine' before the word 'Order'</p>
<p>Division 2 Documents</p>	<p>Division 2 Matters for AFS Act</p>	
<p>7 Issue and endorsement of anti-fouling certificates</p> <p>(1) For subsection 10(1) of the AFS Act, an anti-fouling certificate for an Australian ship must be in accordance with Form MO 98/1 in Schedule 1.</p> <p>(2) For subsection 10(2) of the AFS Act, an endorsement of an anti-fouling certificate for an Australian ship must be in accordance with 'Endorsement of the Records' in Form MO 98/1 in Schedule 1.</p> <p>Note Form MO98/1 is also available on AMSA's website: http://www.amsa.gov.au.</p> <p>(3) For paragraph 25(c) of the AFS Act, a survey mentioned in section 10 of the Act must be carried out in accordance with the 2010 Guidelines for survey and certification of anti-fouling systems on ships adopted by IMO Resolution MEPC.495(64).</p>	<p>6 Anti-fouling certificates</p> <p>(1) For subsection 10(1) of the AFS Act, an anti-fouling certificate for an Australian ship must be in the form of the International Anti-Fouling System Certificate attached to the Convention.</p> <p>Note This form is available on the AMSA website at: http://www.amsa.gov.au.</p> <p>(2) For subsection 10(2) of the AFS Act, an endorsement of an anti-fouling certificate for an Australian ship must be in accordance with the 'Endorsement of the Records' section of the International Anti-fouling System Certificate attached to the Convention.</p> <p>(3) A survey mentioned in section 10 of the AFS Act must be carried out in accordance with the 2022 Guidelines for survey and certification of anti-fouling systems on ships adopted by IMO Resolution MEPC.358(78), as if those Guidelines were mandatory.</p>	<p>Updated to reflect the removal of Form MO98/1 (IAFS Certificate) from the Marine Order, to be updated and published on the AMSA website.</p> <p>Reference to the Guidelines for survey and certification of anti-fouling systems on ships updated to reflect the adoption of revised guidelines in June 2022.</p>
<p>9 Notices of happenings for Australian ships</p> <p>For paragraph 14(1)(c) of the AFS Act, notice of a happening must be in accordance with Form MO 98/2 in Schedule 1.</p> <p>Note 1 Subsection 14(1) of the AFS Act provides that the master and owner each commit an offence if notice is not given within 7 days after the happening.</p> <p>Note 2 Form MO98/2 is also available on AMSA's website: http://www.amsa.gov.au.</p>	<p>8 Notices of happenings</p> <p>For paragraph 14(1)(c) of the AFS Act, notice of a happening must be given to AMSA on the approved form.</p> <p>Note 1 The approved form is available on the AMSA website at: http://www.amsa.gov.au.</p> <p>Note 2 Section 14 of the AFS Act provides that the master and owner of a ship each commit an offence if notice is not given within 7 days after the happening of an event that may affect the ship's compliance with anti-fouling requirements.</p>	<p>Updated to reflect the removal of Form MO98/2 (Notice of Alteration or Damage to an Australian Ship) from the Marine Order, to be published on the AMSA website.</p>
<p>10 Anti-fouling declaration</p> <p>For the definition of anti-fouling declaration in subsection 15(5) of the AFS Act, the declaration must be in accordance with Form MO 98/3 in Schedule 1.</p> <p>Note Form MO98/3 is also available on AMSA's website: http://www.amsa.gov.au.</p>	<p>9 Anti-fouling declarations</p> <p>For the definition of anti-fouling declaration in subsection 15(5) of the AFS Act, the declaration must be in the form of the Declaration on Anti-Fouling System attached to the Convention.</p> <p>Note This form is available on the AMSA website at: http://www.amsa.gov.au.</p>	<p>Updated to reflect the removal of Form MO98/3 (Declaration on Anti-Fouling System) from the Marine Order, to be published on the AMSA website.</p>