Anti-Fouling Systems

On 5 October 2001 a Diplomatic Conference of the United Nations adopted an International Convention on the Control of Harmful Anti-Fouling Systems on Ships. The Convention has been introduced in recognition of the harmful effects of certain anti-fouling systems which use organotin compounds as biocides. In 1992 the United Nations Conference on the Environment and Development called on member states to take measures to reduce pollution caused by organotin compounds used in anti-fouling systems because they pose a substantial risk of toxicity to marine life, have an adverse impact on the marine environment and a possible impact on the human food chain.

However, the Convention also recognizes the need to balance environmental issues against the need for anti-fouling systems to prevent the build-up of organisms on the surface of ships. Anti-fouling treatments are of critical importance to efficient commerce, shipping and impeding the spread of harmful aquatic organisms and pathogens. The Convention’s aim is to develop systems which are environmentally safe, but nonetheless effective and, in the interim, substitute harmful systems already in use with less harmful, and preferably harmless, systems.

Once the Convention comes into force the use of anti-fouling systems listed in Annex 1 will be prohibited and/or restricted. At the moment, only organotin compounds are listed in Annex 1 and the following controls apply to them.

<table>
<thead>
<tr>
<th>Anti-fouling system</th>
<th>Control measures</th>
<th>Application</th>
<th>Effective date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Organotin compounds which act as biocides in anti-fouling systems</td>
<td>Ships shall not apply or re-apply such compounds</td>
<td>All ships</td>
<td>1 January 2003</td>
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<tr>
<td>Organotin compounds which act as biocides in anti-fouling systems</td>
<td>Ships either: (1) shall not bear such compounds on their hulls or external parts or surfaces; or (2) shall bear a coating that forms a barrier to such compounds leaching from the underlying non-compliant anti-fouling systems</td>
<td>All ships (except fixed and floating platforms, FSUs, and FPSOs that have been constructed prior to 1 January 2003 and that have not been in dry-dock on or after 1 January 2003)</td>
<td>1 January 2008</td>
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In addition to these controls, states which are party to the Convention must introduce a system of survey and certification which will apply to all ships of 400 GT and above (excluding fixed and floating platforms, FSUs and FPSOs)\(^1\).

Ships of 24 metres length and above, but less than 400 GT, are not subject to the survey and certification program but must carry a declaration signed by the owner (or his authorized agent) in the form prescribed by the Convention. The declaration essentially says that the ship complies with the requirements of Annex 1 (see above). The declaration is to be accompanied by relevant documentation, such as a paint receipt or contractor’s invoice, or must contain an endorsement as to the type of anti-fouling system applied.

The Convention contains provisions to allow the list of substances and control measures listed in Annex 1 to be extended. There is a system governing the proposal by Convention parties of amendments to Annex 1 and review of proposals by a technical group established by the IMO Marine Environment Protection Committee (MEPC). After review the technical group must evaluate the risks posed by the anti-fouling system proposed for inclusion in Annex 1 and recommend whether its use should, in fact, be controlled. The MEPC will then decide whether to approve the proposal. If adopted by the MEPC the amendment is deemed accepted after 12 months (or such other date as the MEPC may decide) unless within that time more the one third of Convention parties object.\(^2\)

The Convention also contains provisions dealing with inspection of vessels to monitor compliance, compensation for undue delay of vessels in connection with inspection and suspected violations and dispute settlement.

Party states are required to establish sanctions for violations generally and for violations by their flagged vessels wherever they occur. Where a violation occurs within the jurisdiction of a party state proceedings may be taken by that party or details of the violation can be furnished to the administration of the ship concerned to allow proceedings for violation to be taken by that administration pursuant to its law.

The Convention is open for signature from 1\(^{st}\) February to 31\(^{st}\) December 2002 and thereafter for accession. It comes into force when it has been signed/initialled/accepted/approved by at least 25 states with a combined gross tonnage of at least 25% of the world merchant fleet.

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\(^1\) The regulations for surveys and certification are set out in Annex 4 to the Convention and include a model form of certificate.

\(^2\) This facilitation system for amending Annex 1 (and the other annexes) is less cumbersome than the amendment provisions for the Convention text itself which requires positive acceptance by two thirds of party states.