

SUB-COMMITTEE ON SHIP DESIGN AND  
EQUIPMENT  
55th session  
Agenda item 12

DE 55/12/19  
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## DEVELOPMENT OF A MANDATORY CODE FOR SHIPS OPERATING IN POLAR WATERS

### Definition of pollutant

Submitted by FOEI, IFAW, WWF and Pacific Environment

#### SUMMARY

*Executive summary:* In this document, FOEI, IFAW, WWF, and Pacific Environment propose that references to "pollutant" and the definition of "pollutant" are replaced by references to "oil and other harmful substances" and the definition of "harmful substance" as included in the MARPOL Convention

*Strategic direction:* 5.2

*High-level action:* 5.2.1

*Planned output:* 5.2.1.19

*Action to be taken:* Paragraph 8

*Related document:* DE 55/12/5

#### Introduction

1 This submission<sup>1</sup> is made in response to document DE 55/12/5 from Norway containing a draft proposal for an environmental protection chapter for inclusion in the Polar Code, and is submitted in accordance with the provisions of paragraph 4.10.5 of the Committees' Guidelines (MSC-MEPC.1/Circ.2).

#### Proposal for an environmental protection chapter for inclusion in the Polar Code

2 The co-sponsors of this welcome document DE 55/12/5 from Norway which sets out a draft proposal for an environmental protection chapter for inclusion in the draft Polar Code and will contribute to further discussions of the proposed chapter during DE 55. In particular, the co-sponsors support the proposed goal for the chapter on environmental protection.

<sup>1</sup> The preparation of this document for the IMO's DE Sub-Committee was assisted by the Antarctic and Southern Ocean Coalition (ASOC), an umbrella NGO with expert observer status at the Antarctic Treaty Consultative meetings (ATCM) and meetings of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). The Whale and Dolphin Conservation Society (WDACS) and Earthjustice also support this document.

### **Definition of pollutant**

3 In the annex to document DE 55/12/5, which sets out a draft environmental chapter for inclusion in Part A of the draft International Code of safety of ships operating in polar waters, it is proposed to include a definition of "pollutant" as follows: "Pollutant means any substance regulated by MARPOL [and, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea] [except "other substances" as identified in MARPOL Annex II]."

4 The International Convention for the Prevention of Pollution from Ships, 1973, (MARPOL Convention) sets out its intent in the preambular paragraphs and in particular recognises that Parties to the Convention desire "to achieve the complete elimination of intentional pollution of the marine environment by oil and other harmful substances and the minimization of accidental discharge of such substances". It goes on in Article 2(2) to define harmful substances as "harmful substance means any substance which, if introduced into the sea, is liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea, and includes any substance subject to control by the present Convention."

5 It is noted that the MARPOL Convention does not contain a definition of "pollutant". Further, the definition of harmful substance in MARPOL is not limited to those substances regulated by MARPOL, although it does include all such substances controlled by MARPOL.

6 The co-sponsors welcome the inclusion in the document DE 55/18/5 (annex), of a number of proposed functional requirements which refer to losses, emissions, discharges or introduction of potentially harmful substances which are not currently regulated by MARPOL, for example, harmful substances associated with stern tube bearings, seals and main propulsion components, soot/black carbon, biocides and other harmful substances associated with antifouling systems, and ballast water discharges. It is noted that while these harmful substances are not regulated by MARPOL they are addressed via other IMO instruments or are under consideration within the appropriate IMO committees and sub-committees, though not specifically in relation to losses, emissions and discharges in polar waters.

7 The co-sponsors submit that where appropriate, and particularly in an environmental protection chapter, the mandatory Polar Code should refer to "oil and other harmful substances" and include in Part A a definition of harmful substance drawn from the definition included in the MARPOL Convention.

### **Action requested of the Sub-Committee**

8 The Sub-Committee is invited to note this information and to include in the mandatory Polar Code the MARPOL definition of "harmful substance" which includes substances currently regulated by MARPOL but is not restricted to only such substances, and as appropriate throughout the Code replace the term "pollutant" with "oil and other harmful substances".