

MARINE ENVIRONMENT PROTECTION  
COMMITTEE  
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Agenda item 5

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## AIR POLLUTION PREVENTION

### Commenting document on proposed draft amendments to MARPOL Annex VI concerning restrictions or prohibitions of discharges of discharge water from EGCS

Submitted by CESA

#### SUMMARY

*Executive summary:* This document proposes text changes to proposed MARPOL Annex VI amendments as CESA sees the need to ensure uniform regulation and certainty for the industry

*Strategic direction, if applicable:* 1

*Output:* 1.23

*Action to be taken:* Paragraph 15

*Related documents:* Resolution MEPC.340(77); MEPC 76/9/2; MEPC 77/WP.8; ; MEPC 78/17; and MEPC.1/Circ.899

#### Introduction and background

1 This document proposes a way forward on the definition of water areas and on the need to follow a risk and impact assessment in the context of output PPR 1.23 on "Evaluation and harmonization of rules and guidance on the discharge of discharge water from EGCS into the aquatic environment, including conditions and areas" .

2 The scope of work for this output consists of four parts; "Part 1: Risk and impact assessment, Part 2: Delivery of EGCS residues, Part 3: Regulatory matters and Part 4: Database of substances" (annex 3 to document MEPC 77/WP.8).

3 MEPC 78 approved circular MEPC.1/Circ.899 on *2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems*, and circular MEPC.1/Circ.900 on *2022 Guidance regarding the delivery of EGCS residues to port reception facilities* fulfilling part 1 and part 2 of the scope of work for this output.

4 MEPC 78 agreed to extend the target completion year to 2025, further agreed not to include the output in the provisional agenda for PPR 10 and would consider reinstating the output in the provisional agenda of a future PPR Sub-Committee subject to further proposals to the Committee on part 3 and part 4 (paragraph 14.14.3 of document MEPC 78/17).

5 This document is a commenting document on annex 3 to document MEPC 76/9/2 (Austria *et al.*), "Draft amendments to MARPOL Annex VI". Annex 3 to the beforementioned document contains draft amendments to MARPOL Annex VI in line with part 3 of the scope of work.

## Discussion

6 During MEPC 78, CESA raised a concern relating to the potential misinterpretation circular MEPC.1/Circ.899 could cause as the mentioned water areas herein do not align with definitions and terminologies used in UNCLOS (Paragraph 5.13 of MEPC 78/17).

7 Circular MEPC.1/Circ.899 contains details on how to perform a risk assessment and an impact assessment, considering both the eco-systems and human health. The circular also describes in paragraph 7.4 that adaption of restrictions or bans should be considered if one of a number of identified indicative criteria is fulfilled, implying that risk and impact assessments are not prerequisites for adopting restrictions and bans. Since the criteria are broad by nature, in-effect no risk and impact assessment would be needed.

8 According to UNCLOS, a state may impose environmental requirements on international shipping when a ship is operating in a state's internal or territorial sea area, however any national regulation beyond this point (for example in the Exclusive Economic Zone or on the High Seas) will need to be anchored to an international agreement by convention. Examples of such agreements are IMO's NO<sub>x</sub> and SO<sub>x</sub> Emission Control Areas (ECA) covered by MARPOL Annex VI and Particularly Sensitive Sea Areas (PSSA) under the Convention of the IMO.

9 Paragraph 7.1 of circular MEPC.1/Circ.899 refers to Member States adopting national regulations, based on the identified indicative criteria of paragraph 7.4, in for example "Marine waters (open waters)" and "Coastal waters". If these areas include the Exclusive Economic Zone of Member States or the High Seas, such national regulation will automatically be unlawful under UNCLOS and any imposed penalties could be dismissed.

10 The aim with the proposed amendments to MARPOL Annex VI (annex 3 to document MEPC 76/9/2) is unclear to CESA, as the mentioned water areas do not follow normal terminology. Whether the aim is to introduce an ECA approach for EGCS discharges or it is to promote risk and impact assessments of the EGCS discharge in territorial sea areas, CESA recommends that the proposed draft MARPOL amendment provided needs to be revised to ensure clear regulatory text and to avoid uncertainty regardless of the aim.

11 In case the aim is to implement an ECA approach, CESA would like to recall that the *2021 Guidelines for Exhaust Gas Cleaning Systems* (resolution MEPC.340(77)) contains the provision to amend the discharge limits based on collected data, hence it would be appropriate to revise the guidelines as per agreement, rather than introducing an ECA concept. This also falls in line with normal IMO practice of developing goal-based regulation.

12 However, if Member States are of the view that an amendment to MARPOL Annex VI is needed to enable states to regulate EGCS discharges in their Exclusive Economic Zone (EEZ), then CESA finds it crucial that Member States must provide solid documentation following the directions given in circular MEPC.1/Circ.899 and not waiving such using paragraph 7.4 of the same circular.

## Proposal

13 Based upon the view expressed in paragraph 10 of this document, CESA would propose to change the text of the proposed draft amendment to MARPOL Annex VI as provided in annex 3 to MEPC 76/9/2 as follows, in lines with the definitions defined in UNCLOS (deletions are strikethrough and additions underlined):

### "Regulation 2

#### *Definitions*

A new regulation 2.1.33 is added at the end of regulation 2.1, as follows:

".7 *Discharge water*. Any water from an EGCS to be discharged overboard."

### Draft regulation XX

#### ***Discharges of discharge water from Exhaust Gas Cleaning Systems***

- .1 A Party may regulate discharges of discharge water from Exhaust Gas Cleaning Systems (EGCSs) from a ship in ~~a port or ports, harbours, estuaries or other enclosed sea areas, and or other sea areas under its jurisdiction~~ internal waters, ports, bays and territorial sea, taking into account the guidelines to be developed by the Organization.
- .2 Parties shall notify the Organization of local regulations on the discharges of discharge water from EGCSs.
- .3 The Organization shall circulate and make publicly available a list of the sea areas, including ports, harbours and estuaries, subject to local regulations on the discharges of discharge water from EGCSs."

14 Should the Committee decide to implement an ECA approach to EGCS discharges, despite the provisions provided in the *2021 Guidelines for Exhaust Gas Cleaning Systems* (resolution MEPC.340(77)) and with the view that documentation should be a prerequisite as discussed in paragraphs 11 and 12 of this document, an alternative to the text promoted under paragraph 13, is the following:

### "Regulation 2

#### *Definitions*

A new regulation 2.1.33 is added at the end of regulation 2.1, as follows:

".7 *Discharge water*. Any water from an EGCS to be discharged overboard."

**Draft regulation XX*****Discharges of discharge water from Exhaust Gas Cleaning Systems***

- ~~.1 A Party may regulate discharges of discharge water from Exhaust Gas Cleaning Systems (EGCSs) from a ship in a port or ports, harbours, estuaries or other enclosed sea areas, and or other sea areas under its jurisdiction, taking into account the guidelines to be developed by the Organization.~~
- .1 In the case a Party wants to regulate discharges of discharge water from exhaust gas cleaning systems in addition to the criteria set out in the Guidelines developed by the Organisation\* outside their territorial sea, but in sea areas within their exclusive economic zone, the party shall submit an application containing documentation in line with appendix III of this Annex including a risk assessment and impact assessments in accordance with Guidelines developed by this Organisation\*\*.
- \*2021 Guidelines for Exhaust Gas Cleaning Systems (resolution MEPC.340(77))  
\*\* 2022 Guidelines for risk and impact assessments of the discharge water from exhaust gas cleaning systems (circular MEPC.1/Circ.899)
- .2 Parties shall notify the Organization of local regulations on the discharges of discharge water from EGCSs.
- .3 The Organization shall circulate and make publicly available a list of the sea areas, including ports, harbours and estuaries, subject to local regulations on the discharges of discharge water from EGCSs."

**Actions requested of the Committee**

15 The Committee is invited to consider the views expressed in paragraphs 8 to 12, the proposed text changes provided in paragraph 13, the alternative text provided in paragraph 14, and to take action as appropriate.

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