



IMO
INTERNATIONAL MARITIME LAW INSTITUTE
Established under the auspices of the International Maritime Organization
A specialized agency of the United Nations



MERCHANT SHIPPING (AMENDMENT) ACT, 2008

And

MERCHANT SHIPPING (CONTROL OF HARMFUL ANTI-FOULING SYSTEMS) RULES, 2008

TO

**INCORPORATE INTERNATIONAL CONVENTION ON THE
CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS,
2001 (AFS 2001) INTO THE LAWS OF INDIA**

**A Legislation Drafting Project submitted in partial fulfillment of the requirements
for the award of the Degree of Master of Laws (LL.M.) at the
IMO International Maritime Law Institute**

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Academic Year 2007/2008

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**INTERNATIONAL CONVENTION ON THE CONTROL OF
HARMFUL ANTI-FOULING SYSTEMS
ON SHIPS**

DONE AT LONDON ON 5 OCTOBER 2001

Documents tabled on xx (enter date) xxxx (enter month) 2008:

National Interest Analysis

Text of the proposed treaty action

Regulation Impact Statement

Explanatory Note

Introduction

1. Shipping remains the major culprit behind the introduction of non-indigenous species across the globe. The primary vector for the transport of aquatic nuisance species, hence more attention should be focused on hull fouling. Fouling is the process of sessile plants and invertebrates attaching themselves to submerged objects, such as boat hulls, underwater cables, and oil platforms. The creatures latch onto submerged ship hulls, creating small, living communities that travel with the ships to areas where such organisms have never before been found. The organisms can establish new homes in foreign waters, competing with native species for food and habitat.

2. Studies conducted by scientists of the National Institute of Oceanography of India along the Indian coast have recorded the phenomenon of invader in gastropods. A study of Hawaiian waters concluded that 90 percent of 343 marine invading species had likely arrived via fouled ship hulls. A recent study reported that 36 percent of invasive coastal marine species in North America could be the result of hull fouling alone, while ballast water represented only 20 percent.

3. About 148 organisms have invaded New Zealand waters, with seventy percent of those likely arriving by hull fouling.

Background

4. In the early days of sailing ships, lime and later arsenic were used to coat ships' hulls, until the modern chemicals' industry developed effective anti-fouling paints using metallic compounds. These compounds slowly "leach" into the sea water, killing barnacles and other marine life that have attached to the ship. Anti-Fouling Systems are used to keep the hulls of ships clean and free from fouling organisms so that they can travel faster through the water and consume less fuel. Anti-fouling paints are used to coat the bottoms of ships to prevent sea life such as algae and molluscs attaching themselves to the hull thereby slowing down the ship and increasing fuel consumption.

5. "Anti-Fouling Systems" means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms.

6. Some of the "Anti-Fouling Systems" use organotin compounds. Scientific studies have shown that some of the most widespread active ingredients in Anti-Fouling Systems are organotin compounds. Organotin compounds have been scientifically proven to have adverse effects on ecologically and economically important marine organisms.

7. Studies show that these compounds persist in the water, killing sea life, harming the environment and possibly entering the food chain.

8. One of the most popular anti-fouling paints, developed in the 1960s, contained the organotin compound tributyltin (TBT), which has been proven to cause deformations in oysters and sex changes in whelks.

9. Scientific studies and investigations have also shown that Anti-Fouling Systems that use organotin compounds as biocides used on ships pose a substantial risk of toxicity and have chronic impacts on ecologically and economically important marine organisms.

10. Human health and wildlife through the contamination of the food chain may be harmed as a result of the consumption of affected seafood.

11. Today, there are a variety of effective Anti-Fouling Systems available which do not contain TBT, such as organotin free anti-fouling paints and biocide-free non-stick coatings which have an extremely slippery surface thereby preventing fouling occurring and making it easier to clean when it does.

International regulations

12. The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS 2001) was adopted on 5 October 2001 by the International Maritime Organization (IMO), the United Nations specialized agency with responsibility for safety and security of shipping and the prevention of marine pollution by ships.

13. The Convention prohibits the use of environmentally harmful organotins in anti-fouling paints applied on ships and provides a system for preventing the possible use in the future of other harmful substances in Anti-Fouling Systems, once they have been identified and agreed upon at the IMO.

14. The application of organotin compounds on the hull of ships of 400 gross tonnage and above were prohibited from 01 January 2003. They will be completely banned from 17 September 2008 (although a barrier coat may be used to prevent underlying non-compliant anti-fouling systems from leaching).

15. Under Article 18 of the Convention, it shall enter into force 12 months after 25 States representing 25 per cent of the world's merchant shipping tonnage have ratified it. With the ratification by Panama, the Convention has been ratified by 25 States, with a combined 38.11 per cent of world merchant shipping tonnage. The Convention will thus enter into force on 17 September 2008.

Effect of entry into force of the Convention

16. When the Convention enters into force, ships will no longer be permitted to apply or re-apply organotin compounds which act as biocides in their Anti-Fouling Systems; ships

either shall not bear such compounds on their hulls or external parts or surface or, for ships already carrying such compounds on their hulls, a coating that forms a barrier to such compounds will have to be applied to prevent them leaching from the underlying non-compliant Anti-Fouling Systems.

17. The Convention also establishes a mechanism to evaluate and assess other Anti-Fouling Systems and prevent the potential future use of other harmful substances in these systems.

18. The Convention will apply to ships flying the flag of a Party to the Convention, as well as ships not entitled to fly their flag but which operate under their authority and to all ships that enter a port, shipyard or offshore terminal of a Party. It will apply to all ships, including fixed or floating platforms, floating storage units (FSUs), and floating production storage and off-loading units (FPSOs).

Obligations under the Convention

19. The Convention applies to all Indian and foreign ships as defined in Article 2(9) and Article 3 of the Convention. These include fixed or floating platforms, floating storage units (FSUs), and floating production storage and off loading units (FPSOs) used by the oil production industry.

20. The Convention does not apply to warships, naval auxiliary or other ships used only on government non-commercial service (Article 3, paragraph 2).

21. Article 4 of the Convention sets out the controls on the use of Anti-Fouling Systems listed in Annex 1.

22. Annex 1 of the Convention states that by an effective date of 01 January 2003, all ships shall not apply or re-apply organotin compounds that act as biocides in Anti-Fouling Systems, namely TBT-based antifouling paints. By 01 January 2008 (effective date), ships either:

(a) shall not bear such compounds on their hulls or external parts or surfaces; or

(b) shall bear a coating that forms a barrier to such compounds leaching from the underlying non-compliant Anti-Fouling Systems.

23. Waste material from the application or removal of TBT-based paints will be controlled in a safe and environmentally sound manner (Article 5).

24. Survey and certification of vessels will be required under the Convention (Article 10).

25. The Director General of Shipping and/or an authorized organization will undertake this role as part of its flag State control function for Indian ships. Ships of 400 gross tonnage and above engaged in international voyages shall be subject to an initial survey before the ship is put into service and a survey when the Anti-fouling Systems are changed or replaced.

26. Ships of 24 metres or more in length, but less than 400 gross tonnage engaged in international voyages are required to carry a declaration of Anti-Fouling Systems signed by the owner or owner's authorized agent.

27. Article 7 provides for the establishment of a technical group within the Marine Environment Protection Committee of the IMO to review proposals for amendments to controls on anti-fouling systems, specifically the addition of new Anti-Fouling Systems. When required, an Indian representative will participate in the deliberations of the technical group.

28. The Convention provides for appropriate measures to promote and facilitate scientific and technical research on the effects of anti-fouling substances (Article 8), and provides for communication and exchange of information between parties to the Convention and the IMO (Article 9). Where permitted within relevant legislative confidentiality provisions, Indian agencies will participate in the exchange of information between Parties to the Convention and the IMO.

29. The Convention provides for inspection of ships and detention for violations (Article 11). This will be undertaken by The Director General of Shipping as part of the port and flag State control functions.

30. Each Party to the Convention must also prohibit and enforce violations of the Convention under its domestic law (Article 12). Compensation may be provided for any loss or damage suffered if a ship is unduly detained or delayed while undergoing inspection for possible violations of the Convention (Article 13).

Effect of the Convention on India

31. Once the Convention comes into force, ship owners and ship operators must carry an International Anti-Fouling Systems certificate issued by the Central Government.

32. India has a large shipping industry. Hence, the non compliance of the requirements of the convention will affect the industry and economy adversely.

33. Companies worldwide have largely stopped producing and distributing anti-fouling paints containing organotin compounds. The result is that the Convention has largely come into force de facto. Any Indian ship that applies TBT-based paints after 17 September 2008 may therefore encounter difficulties in foreign ports.

Implementation of the Convention by India

34. India has a long coast line and the people depend on the sea for food and the export of seafood as a source of livelihood. Use of Anti-Fouling Systems that uses organotin compounds as biocides is therefore harmful to both the people and the economy. An Anti-Fouling Systems that uses organotin compounds as biocides and the introduction of such organotins into the environment hence must be phased out.

35. India is a signatory to the Rio Declaration on Environment and Development and should be mindful of the precautionary approach set out in Principle 15 of this

Declaration which has been referred to in resolution MEPC 67(37) adopted by Marine Environment Protection Committee (MEPC) on 15 September 1995.

36. This action is also in accordance with India's general obligations as a signatory to the United Nations Convention on the Law of the Sea, 1982 (UNCLOS), which provides for nations to adopt generally accepted international rules and standards when implementing laws and regulations to prevent, reduce and control pollution of the marine environment from vessels (Article 211 of UNCLOS).

37. If India does not become a party to the Convention, the laws in India on environmental protection will be at variance with internationally adopted standards and hence the shipping industry of the country will be adversely affected.

38. Also, Indian ships engaged in international voyages will incur additional costs as a result of the need to have proper survey documentation confirming compliance with the Convention. Such documentation can only be issued by Administrations that have adopted the Convention.

39. Due to India's reliance on the international maritime industry to underpin our international trade, support and adoption of the Convention is essential to provide for adequate protection of India's marine environment.

40. By becoming a party to the Convention, India will be able to enforce the full range of controls on TBT-based anti-fouling paints on foreign and Indian flagged vessels.

41. Recognizing the importance of protecting the marine environment and human health from adverse effects of Anti-Fouling Systems, these regulations are intended to improve the marine environment and reduce the impact of shipping on the marine eco system by the control of such systems.

Regulation Impact Statement

Future treaty action

42. Article 16 outlines how amendments to the Convention can be made. Any Party can propose an amendment to an article or annex to the Convention. A proposed amendment to Annex 1 shall be subject to technical review before proceeding through the normal amendment process. Amendments shall be adopted by a two-thirds majority of the Parties present and voting in the Marine Environment Protection Committee of the IMO, on condition that at least one-third of the Parties are present at the time of voting.

43. Any adopted amendment is subject to a further acceptance procedure. An amendment will be accepted after two-thirds of the Parties have deposited a notification of acceptance, or after the lapse of a specified period of time, as long as there have not been objections from more than one-third of the Parties. The amendment will enter into force, for those Parties accepting the amendment, six months after it has received acceptance.

44. Any notification or declarations under Article 16 shall be made in writing to the Secretary-General of the IMO.

Withdrawal or denunciation

45. Under Article 19, India may denounce the Convention by written notification to the Secretary-General of the IMO at any time after two years from the date on which the Convention enters into force for India. Denunciation would take effect one year after receipt or longer if specified in the notification.

Incorporation of the Convention in the domestic law of India

46. Action by the Government of India is required to develop legislation to give effect to the Convention in India.

47. India should give full and complete effect to the provisions of the Convention by promulgating laws, decrees, orders, rules and regulations and to take all other steps which may be necessary to give the convention full and complete effect.

48. Another aspect which needs to be considered while incorporation of the Convention in our domestic law is that the violation of the provisions of the Convention should have sanctions which are adequate in severity to discourage violations of the Convention where ever they occur as desired by article 12(3) of the Convention.

49. Last but not the least effort has been made to make this amendment as a consolidated whole in one part pertaining to the subject matter in the Merchant Shipping Act, 1958. This has been done for example by the IMO while incorporating amendments to the Safety of Life at Sea (SOLAS) Convention. This will facilitate reference of this amendment to be available at one location in the Merchant Shipping Act, 1958.

50. India has a parliamentary form of Government. An international convention becomes binding only after being incorporated into domestic law since India follows the dualist system. Hence a Bill has to be drafted to ensure that it is in accordance with the Convention. The Bill has to be introduced by the ruling government when the Parliament is in session. On being passed by Parliament (if it receives the majority vote of both Houses of Parliament) it becomes an Act. Then on receiving the assent of the President of India, it is published in the official gazette and the Act becomes law.

51. Therefore ratification of the Convention by India is dependent on the passage of domestic legislation which may be called the Merchant Shipping (Amendment) Act, 2008.

52. Section 7 of the Merchant Shipping Act, 1958 and section 356-ZL of the Merchant Shipping (Amendment) Act, 2008 empowers the Central Government to make rules to carry out the purpose of these acts and also the power to appoint such official as it may deem fit to carry out the function on its behalf.

53. The Ministry of Shipping, Road Transport and Highways and The Director General of Shipping (DG Shipping) will also make appropriate subordinate legislation such as Shipping Rules. These rules shall be based on guidelines being developed by the IMO.

Sd---

Secretary of Shipping,
Government of India

Draft Act of Parliament;

Merchant Shipping (Amendment) Act, 2008

xx (enter number) of 2008

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Merchant Shipping (Amendment) Act, 2008

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MINISTRY OF SHIPPING

(SHIPPING WING)

NOTIFICATION

NEW DEHLI, the xx th
(enter day) xxxx (enter month), 2008

S.O. xx (enter number) (E). -- In exercise of the powers conferred by sub-section (2) of section 1 of the Merchant Shipping (Amendment) Act, 2008 xx (enter number) of 2008, the Central Government hereby appoints the 17th day of September, 2008 as the date on which the said Act shall come in force.

Sd-

Secretary of Shipping
Government of India

To,

Ministry of Law and Justice
(Legislative Department)
Government of India
New Delhi
India

Draft Act of Parliament;

Merchant Shipping (Amendment) Act, 2008

xx (enter number) of 2008

xx th (enter date), xxxx (enter month), 2008

An act further to amend the Merchant Shipping Act 1958.

Be it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:

Statement of Objects and Reasons— The Merchant Shipping Act, 1958 governs matters relating to shipping in India. This Bill therefore seeks to amend the Merchant Shipping Act, 1958, for the purpose of giving effect to the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS 2001).

The Convention prohibits the use of environmentally harmful organotin compounds in anti-fouling paints applied on ships. The Convention also provides a system for preventing the possible use in the future of other harmful substances in Anti-Fouling Systems, once they have been identified and agreed at the International Maritime

Organization (IMO). India has acceded to a number of International Conventions adopted by it, but this Convention has not been ratified by the Government of India.

This Convention has been ratified by thirty six States which account for more than thirty eight percent of the world tonnage. Accordingly therefore the provisions of the Convention will come in force on 17 September 2008.

Further, Indian Ships engaged in international trade undertake voyages to almost all countries of the world and therefore unless they comply with the provisions of the Convention, they may become liable for heavy penalties for contravention of the national laws of such countries.

Shipping remains the major culprit behind the introduction of non-indigenous species across the globe. The primary vector for transport of aquatic nuisance species, hence more attention should be focused on hull fouling. Fouling is the process of sessile plants and invertebrates attaching themselves to submerged objects. To prevent this process anti-fouling paints using metallic compounds are applied to keep the hull of ships clean and free of fouling organism so that they can travel faster through the water and consume less fuel.

Scientific studies conducted internationally have shown that Anti-Fouling Systems that use organotin compounds used as biocides pose a substantial risk of toxicity and have a chronic impact on ecologically and economically important marine organisms. Human health and wild life through the contamination of the food chain may also be harmed as a result of the consumption of affected seafood.

Therefore suitable amendments are required to be made in the Merchant Shipping Act, 1958 to enable the Government of India or its agencies to give effect to the Convention.

Clause 1(3) of the Bill seeks to give effect to the provision of the Convention by inserting a new Part in the Merchant Shipping Act, 1958.

Preliminary

(1) Short title. -- (1) This Act may be called the Merchant Shipping (Amendment) Act, 2008.

(2) It extends to the whole of India including the limit of the territorial waters, the continental shelf, the exclusive economic zone or any other maritime zone of India within the meaning of section 2 of the Territorial Waters Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

(3) Insertion of new part. -- after Part XI-A of the Merchant Shipping Act, 1958 (44 of 1958) (here and after referred to as the principal Act), the following Part shall be inserted namely:--

PART XI-B

Control of Harmful Anti-Fouling Systems

356-P. Commencement and application.--

(1) the provisions of this Part shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Part.

(2) Unless otherwise specified in this Part, this Part shall apply to:-

- (a) ships entitled to fly the flag of India;
- (b) ships not entitled to fly the flag of India, but which operate under the authority of a Government of India; and
- (c) ships that enter a port, shipyard, or offshore terminal of India, but do not fall within subparagraph (a) or (b).

356-Q. Government ships.--

(1) This Part shall not apply to any warships, naval auxiliary or other ships owned or operated by India or by the Government of any country and used, for the time being, only on government non-commercial purpose. However, such ships shall ensure that by the adoption of appropriate measures not impairing operations or operational capabilities act in a manner consistent, as far as is reasonable and practicable, with this Part.

356-R. Definitions.--

(1) In this Part unless the context otherwise requires, --

(a) Anti-Fouling Systems certificate means a certificate issued under section 356-U.

(b) anti-fouling declaration means a declaration relating to compliance with the anti-fouling requirements, being a declaration in a form prescribed for the purposes of this definition.

(c) Anti-Fouling Systems means a coating, paint, surface treatment, surface, or device that is used on a ship to control or prevent attachment of unwanted organisms.

(d) Convention means the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001 (AFS 2001).

(e) Law of the Sea Convention means the United Nations Convention on the Law of the Sea, done at Montego Bay on 10 December 1982.

(f) Organization means the International Maritime Organization.

(g) Secretary-General means the Secretary-General of the International Maritime Organization.

(h) Committee means the Marine Environment Protection Committee of the Organization.

(i) Technical Group is a body comprised of representatives of the Parties, Members of the Organization, the United Nations and its Specialized Agencies, intergovernmental organizations having agreements with the Organization, and non-governmental organizations in consultative status with the Organization, which should preferably include representatives of institutions and laboratories that are engaged in the analysis of the Anti-Fouling Systems. These representatives shall have expertise in environmental fate and effects, toxicological effects, marine biology, human health, economic analysis, risk management, international shipping, Anti-Fouling Systems coating technology, or other fields of expertise necessary to objectively review the technical merits of a comprehensive proposal.

(j) Act means the Merchant Shipping Act, 1958 (44 of 1958).

(k) Central Government means the Government of India.

(l) Administration means the Government of State under whose authority the ship is operating. With respect to a ship entitled to fly the flag of India, the Administration is the Central Government. With respect to fixed or floating platforms engaged in exploration and exploitation of the sea-bed and subsoil thereof adjacent to the coast over which the coastal State exercises sovereign rights for the purposes of exploration and exploitation of their natural a resource, the Administration is the Central Government.

(m) Director General means the Director General of Shipping appointed under Section 7 of the Merchant Shipping Act 1958.

(n) surveyor means a person appointed or authorized in this behalf by the Central Government under Section 9 of the Merchant Shipping Act 1958.

(o) ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or

floating platforms, floating storage units (FSUs) and floating production storage and off-loading units (FPSOs).

(p) shipping facility means:

- (i) a port; or
 - (ii) a shipyard; or
 - (iii) an offshore terminal;
- within the meaning of the Convention.

(q) gross tonnage means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex 1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention.

(r) length means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto, or any successor Convention.

(s) Undue delay has the same meaning as in Article 13 of the Convention.

(t) HAFC (short for harmful anti-fouling compound) means an organotin compound that acts as a biocide in an anti-fouling system. For this purpose, **organotin compound**, **biocide** and **Anti-Fouling Systems** have the same meaning as in the Convention.

(u) designated external surface means any part of the hull or external parts or surfaces. For this purpose, **hull or external parts or surfaces** has the same meaning as in the Convention.

(v) pre-2003 platform means a fixed and floating platforms, FSUs, and FPSOs that have been constructed prior to 1 January 2003 and have not been in dry dock on or after that date.

(w) Indian ship means:

- (i) a ship registered, or required to be registered, under the Merchant Shipping Act 1958;
- or

(ii) an unregistered ship that has Indian nationality under the Merchant Shipping Act, 1958.

(x) International voyage means a voyage by a ship entitled to fly the flag of one State to or from a port, shipyard, or offshore terminal under the jurisdiction of another State.

356-S. Compliance with anti-fouling requirements. -- A ship complies with anti-fouling requirements if:

- (a) it has no HAFC applied on any designated external surface; or
- (b) each HAFC that is applied on any designated external surface has a coating that forms a barrier to the HAFC leaching into the water.

356-T. Prohibition on the application or use of harmful Anti-Fouling Systems.--

- (1) HAFC not to be applied or re-applied on a designated external surface of a ship; either:
 - (i) the ship is an Indian ship; or
 - (ii) the ship is a foreign ship and the conduct occurred in an Indian shipping facility.

Anti-Fouling Systems Certificates and Anti-Fouling Declarations

356-U. Issue and endorsement of Anti-Fouling Systems certificates.--

Initial certificate

- (1) If:
 - (a) a surveyor surveys an Indian ship of 400 gross tonnage and above, for the purpose of determining whether the ship complies with the anti-fouling requirements; and
 - (b) the ship does not have a current Anti-Fouling Systems certificate; and

(c) on the basis of the survey, the surveyor is satisfied that the ship complies with the anti-fouling requirements;

then the surveyor must issue an Anti-Fouling Systems certificate in respect of the ship.

Endorsement of existing certificate

(2) If:

(a) a surveyor surveys an Indian ship of 400 gross tonnage and above, for the purpose of determining whether the ship complies with the anti-fouling requirements; and

(b) the ship has a current Anti-Fouling Systems certificate, but needs an endorsement in order for the certificate to continue in effect; and

(c) on the basis of the survey, the surveyor is satisfied that the ship complies with the anti-fouling requirements;

then the surveyor must endorse the Anti-Fouling Systems certificate.

Status of certificate and endorsement

356-V. Acceptance of certificate issued outside India.--

Any certificate issued or endorsement by the competent authority in any country outside India to a ship registered in that country or any certified contracting party to the Convention as amended from time to time to any ship wherever registered, shall be accepted at any port or place in India as if it were issued under this Part.

356-W. Lapsing of Anti-Fouling Systems certificate.—

(1) An Anti-Fouling Systems certificate ceases to be in force if the ship ceases to be an Indian ship.

(2) An Anti-Fouling Systems certificate ceases to be in force if:

- (a) since the certificate was issued or last endorsed, any coating or treatment is applied to any designated external surface of the ship; and
- (b) after the coating or treatment is applied, the ship is taken to sea without the certificate having been endorsed in respect of the coating or treatment.

356-X. Cancellation of Anti-Fouling Systems certificate.--

(1) The Director General may cancel an Anti-Fouling Systems certificate that is in force in respect of an Indian ship if the Director General has reason to believe that:

- (a) the ship does not comply with the anti-fouling requirements; or
- (b) the Anti-Fouling Systems certificate was issued or endorsed upon false or erroneous information.

(2) The Director General may cancel an Anti-Fouling Systems certificate under subsection (1) whether or not the certificate was issued by the Director General.

(3) If an Anti-Fouling Systems certificate in respect of a ship is cancelled under this section, the Director General may:

- (a) require the certificate to be given to a specified person; and or
- (b) detain the ship until the requirement is complied with.

(4) The requirement under paragraph (3) must be:

- (a) made by notice in writing; and
- (b) addressed to the owner, agent or master of the ship.

356-Y. Obligation to report damage to ship.--

(1) If:

- (a) an Indian ship has a current Anti-Fouling Systems certificate; and
- (b) something happens to the ship that affects, or might affect, its compliance with the anti-fouling requirements; then
- (c) notice of the happening is to be given within 7 days after the happening so that the effect on the Anti-Fouling Systems can be assessed by a surveyor.

356-Z. Obligation to carry anti-fouling declaration.—

- (1) On or after 17 September 2008,
- (a) a Indian ship to or from a shipping facility on an international voyage; and
- (b) the ship is at least 24 metres in length and less than 400 gross tonnage;
- (c) the ship must have on board an anti-fouling declaration for the ship; and
- (d) the ship is not a pre-2003 platform.

356-ZA. Certificate to be produced to customs by ships other than Indian ship registered in non-Convention countries. –

The master of every ship registered in a country to which the Convention does not apply shall produce to the customs collector from whom a port clearance for the ship from any port in India is demanded, an International Anti-Fouling Systems certificate in respect of the ship, and the port clearance shall not be granted and the ship may be detained until the certificate required by this section is so produced.

356-ZB. Non-complying ship not to enter or leave an Indian Port. –

- (1) No Indian ship of 400 gross tonnage and above shall enter or leave or attempt to enter or leave a port or place in India, unless it carries on board a certificate issued under section 356-U.

(2) No ship other than an Indian ship, of 400 gross tonnage and above, wherever registered shall enter or leave or attempt to enter or leave a port or place in India, unless it carries on board a certificate issued under section 356-U.

(3) No custom officer shall grant inward entry or outward clearance to any ship to which section 356-U applied, unless its master produces a certificate required under the respective sub section.

356-ZC. Issue of certificate to foreign ships in India and Indian ships in foreign countries. –

The Central Government may, at the request of the Government of a country to which the Convention applies, cause a International Anti-Fouling Systems certificate to be issued in respect of a ship registered or to be registered in that country, if it is satisfied in like manner as in the case of an Indian ship that such certificate can properly be issued.

356-ZD. Survey and Inspection of ship. -- A surveyor or any person authorized in this behalf may inspect any Indian ship. The surveyor may go on board the ship and require the master to supply him with any information which is in the power of the master to supply for the purpose, including production of any certificate:

- (a) ensuring that obligations imposed by or under this Part are complied with;
- (b) Inspect the records of Anti-Fouling Systems.
- (c) take photographs (including video recordings) of the ship or of equipment or anything else, in or on board the ship;
- (d) examine, and take samples of, any substances on board the ship or on any designated external surface of the ship;

2. A surveyor or any such person may, if necessary, make, without unduly delaying the ship, a true copy or any entry in the records of Anti-Fouling Systems of the ship and may require the master of the ship to certify the copy to be a true copy and such copy shall be evidence of the facts stated therein.

356-ZE. Inspection of ship other than Indian ships belonging to non-Convention countries. –

The provisions of section 356-S shall apply, in the same manner as they apply to Indian ships, to all ships registered in a country to which the Convention does not apply while they are within Indian jurisdiction.

356-ZF. Power to give a notice to the owner of a ship for non-compliance with anti-fouling requirements. –

(1) Where the Central Government is satisfied that organotin chemicals are leaching or likely to leach from a ship it may require the owner, agent, master or charterer of the ship or all or any of them, by notice served on him or as the case may be on them, to take such action in relation to the ship, or, as the case may be, as may be specified in such notice.

(2) Without prejudice to the generality of sub-section (1), the notice issued under that sub-section may require the person or persons on whom such notice is served to take action in relation to any or all of the following matters, namely:--

- (a) action for preventing the leaching of organotin chemicals from the ship;
- (b) action for removing organotin chemicals from the ship in such manner, if any, and to such place, if any, as may be specified in the notice;
- (c) action for removal of the ship to a place, if any, as may be specified in the notice;
- (d) action for removal of the organotin chemicals on the surface of the sea in such manner, as may be specified in the notice;
- (e) action for disposal of the organotin chemicals so collected, as may be specified in the notice;

(3) The Central Government may, by any notice issued under sub-section (1), prohibit the removal—

- (a) of the ship, from a place specified in the notice;
- (b) of the ship, of any cargo or stores as may be specified in the notice except with previous permission and upon such conditions, if any, as may be specified in the notice.

(4) Notwithstanding anything contained in sub-section (2), the Central Government may, if it is of the opinion that the ship caused or is likely to cause or has or may present a danger to the environment, proceed to take such measures as may be deemed necessary and any measures so taken shall be deemed to have been taken under section 356-ZF.

356-ZG. Power to take measures for preventing environmental degradation by Harmful Anti-Fouling Systems.--

(1) Where any person fails to comply, or fails to comply in part, with any notice served on him under section 356-ZF. The Central Government may, whether or not such person is convicted of an offence under this Part by reason of his having so failed to comply, cause such action to be taken as it may deem necessary:

- (a) carrying out the directives given in the notice issued under section 356-ZF; and or
- (b) containing or preventing the threat to be caused, as the case may be, from the ship.

(2) any expenditure or liability incurred by the Central Government in , or by reason of , the exercise of powers under sub-section (1) in relation to the ship in respect of which notice had been issued under section 356-ZF, shall be a debt due to the Central Government by the person or persons on whom the notice was served and may be recovered from that person ,or from all or any of those persons and shall be a charge upon all or any ship owned by that person or persons which may be detained by the Central Government until the amount is paid.

356-ZH. Power to detain ship and procedure for detention. –

(1) Where an Indian ship in any port and such ship does not bear a valid International Anti-Fouling Systems certificate the Central Government may provisionally detain such ship for the purpose of being surveyed and either finally detain or release as follows namely:

- (a) The Central Government, if it has reason that there are clear grounds for believing that a ship is in violation of the Convention.

(b) A written statement of the grounds of such detention shall be forthwith served on the master of such ship.

(c) When the Central Government provisionally orders the detention of the ship, it shall forthwith appoint some competent person to survey such ship and report thereon; and, on receiving the report, may either order the ship to be released or if in its opinion the ship is in violation of the Convention, may order her to be finally detained until the performance of such conditions as may be necessary.

(d) Before an order for final detention is made, a copy of the report shall be served upon the master of the ship and within seven days after such service the owner or master may appeal against such report, in the manner prescribed to the Director General where the ship is detained.

(e) Where a ship has been provisionally detained and a person has been appointed under this section to survey such ship, the owner or master of the ship, at any time before such person makes that survey, may require that he shall take with him as assessor such person as the owner or master may select, being a person, a assessor or a surveyor or, a person of nautical engineering or other special skill and experience.

If the surveyor and assessor agree that the ship should be detained or released, the Central Government shall cause the ship to be detained or released accordingly, and the owner or master shall have no right of appeal. If the surveyor or assessor differs in their report, the Central Government may act as if the requisition had not been made, and the owner or master shall have a right of such appeal touching the report of the surveyor as is here in before provided in this section.

(f) Where a ship has been provisionally detained, the Central Government may at any time if it thinks it expedient; refer the matter to the Director General where the ship is detained.

(g) The Central Government may at any, if satisfied that a ship detained under this section is not in violation; order her to be released either upon or without any conditions.

(2) Any person appointed by the Central Government for the purpose (in this Part referred to as a detaining officer) shall have the same power as the Central Government has under this section of provisionally ordering the detention of a ship for the purpose of being surveyed, and of appointing a person to survey her, and if he thinks that a ship so detained by him is not in violation, may order her to be released.

(3) A detaining officer shall forthwith report to the Central Government any order made by him for the detention or release of a ship.

(4) A ship detained under this section shall not be released by reason of her Indian register being subsequently closed.

(5) The ship must be released immediately if:

(a) security is provided in a form acceptable to the Director General; and or

(b) an amount that, in the Director General's opinion, is equivalent to the maximum amount of all penalties, other amounts of money, costs and expenses that could be payable by the master and owner of the ship in respect of the offence.

356-ZI. Application of provisions as to detention of a ship other than an Indian ship.--

(1) When a ship other than an Indian ship is in a port in India and is whilst at that port the Central Government, if it has reason that there are clear grounds for believing that the ship is in violation of the Convention. The provisions of this part with respect to the detention of ships shall apply to that ship as if she were an Indian ship with the following modifications, namely:

(a) a copy of the order for the detention of the ship shall forthwith be served on the consular officer for the country to which the ship belongs at or to the port in which such ship is detained;

(b) the consular officer, at the request of the owner or master of the ship, may require that the person appointed by the Central Government to survey the ship shall be accompanied by such person as the consular officer may select, and in that case, if the surveyor and that person agree, the Central Government shall cause the ship, to be detained or released accordingly, but, if they differ, then Central Government may act as if the requisition had not been made, and the owner and master shall have the right of appeal touching the report of the surveyor as here in before provided in the case of on Indian ship; and

(c) where the owner or master of the ship appeal, the consular officer, at the request of the owner or master, may appoint a competent person to be assessor in the case in lieu of the assessor who, if the ship were an Indian ship would be otherwise than by the Central Government.

356-ZJ. Liability of Central Government for costs and damage when ship is wrongly detained. —

If it appears that there was not reasonable and probable cause, by reason of the condition of the ship or the act or default of the owner or the master, for the detention of a ship, the Central Government shall be liable to pay to the owner of the ship his costs and incidentals to the detention and survey of the ship and also compensation for any loss or damage sustained by him for reason of the detention or survey.

356-ZK. Method of calculating costs of detention and survey. —

For the purpose of this Part, the costs of and incidental to any proceeding before a court, and a reasonable amount in respect of the remuneration of the surveyor or any person appointed to represent the Central Government before the court, shall be deemed to be part of the costs of the detention and survey of the ship.

356-ZL. Power to make rules. —

- (1) The Central Government may make rules to carry out the provisions of this Part.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:
 - (a) the form in which application for certificates for the issue of Anti-Fouling Systems certificate and the particulars that such application shall contain.
 - (b) the fees which may be levied for the issue or reissue of Anti-Fouling Systems certificates or certificates of survey or inspection and all other purposes of this Part.
 - (c) any other matter which has to be or may be prescribed.

(3) Provided that the rules under this Part shall be made having regard to the provisions of the Convention.

356-ZM. Time limit for prosecution of offences.--

(1) Subject to subsection (2), prosecution for an offence against this Part may be brought in time stipulated.

(2) If the prosecution relates to an offence involving a foreign ship:

(a) the prosecution must be brought not more than 3 years after the commission of the offence; and

(b) the prosecution must be suspended if, under paragraph 1 of article 228 of the Law of the Sea Convention, it is required to be suspended; and

(c) the prosecution must be terminated if, under paragraph 1 of article 228 of the Law of the Sea Convention, it is required to be terminated.

356-ZN. Jurisdiction of Courts. –

(1) Any action for a claim against the Central Government shall be brought before the High Court.

(2) Where an action for compensation for damages has been brought against the Central Government before the High Court the party to the proceedings shall notify the Central Government of the proceedings.

356-ZO. Extinguishment of claim. –

(1) Notwithstanding, anything contained in any other law for the time being in force, no action to enforce a claim against the Central Government under this Part shall be entertained by a High Court unless:

(a) the action to enforce is commenced; or

(b) notice of action to enforce a claim is given by the owner in respect loss or damages suffered due to a ship being unduly detained is given to the Central Government within three years from the date of such detention.

(2) Provided that in no case an action to enforce a claim shall be brought after six years from the date of such detention.

Offences and Penalties

356-ZP. Offences and Penalties. –

(1) Any person who contravenes any provisions of the part or fails to comply with the provisions which it was his duty to comply with shall be guilty of an offence and if such offence has no penalty specially provided in sub-section (2) shall be punishable with fine which may extend to fifty thousand Rupees.

(2) The offences mentioned below shall be punishable to the extent mentioned with reference to such offence respectively.

(I) Application or use of harmful Anti-Fouling Systems

1) (a) applying an HAFC either:

(i) the ship is an Indian ship; or

(ii) the ship is a foreign ship and the conduct occurred in an Indian shipping facility.

Fine which may extend to five lakh Rupees.

(2) (a) An HAFC is applied or re-applied on a designated external surface of:

(i) an Indian ship; or

(ii) a foreign ship in an Indian shipping facility; and

(b) the person is the owner or master of the ship.

Fine which may extend to five lakh Rupees.

(II) Non-complying ships not to enter or remain in shipping facilities

1) (a) on or after 17 September 2008, the person:

(i) takes an Indian ship to a shipping facility; or

(ii) permits an Indian ship to be taken to a shipping facility; and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 platform.

Fine which may extend to twenty lakh Rupees.

(III) Non-complying Indian ship remaining in shipping facility

(1) (a) on or after 17 September 2008, the person allows an Indian ship to remain in a shipping facility (whether or not it entered before that date); and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 platform;

then the person commits an offence for each day on which the ship so remains.

Fine which may extend to one lakh Rupees for each day the ship so remains.

(IV) Non-complying foreign ship entering Indian shipping facility

(1) on or after 17 September 2008, the person:

(i) takes a foreign ship to an Indian shipping facility; or

- (ii) permits a foreign ship to be taken to an Indian shipping facility; and
- (b) the person is the master or owner of the ship; and
- (c) the ship does not comply with the anti-fouling requirements; and
- (d) the ship is not a pre-2003 platform.

Imprisonment which may extend to one year or fine which may extend to twenty lakh Rupees or both.

(V) Non-complying foreign ship remaining in Indian shipping facility

- (1) If the person:
 - (a) on or after 17 September 2008, allows a foreign ship to remain in an Indian shipping facility (whether or not it entered before that date); and
 - (b) the person is the master or owner of the ship; and
 - (c) the ship does not comply with the anti-fouling requirements; and
 - (d) the ship is not a pre-2003 platform;

then the person commits an offence for each day on which the ship so remains.

Fine which may extend to one lakh Rupees for each day the ship so remains.

(VI) Non-complying Indian ship entering shipping facility

- (1) If the person:
 - (a) on or after 17 September 2008, an Indian ship enters a shipping facility; and
 - (b) the person is the master or owner of the ship; and
 - (c) the ship does not comply with the anti-fouling requirements; and
 - (d) the ship is not a pre-2003 platform.

Fine which may extend to twenty lakh Rupees.

(VII) Non-complying Indian ship remaining in shipping facility

(1) If:

(a) on or after 17 September 2008, an Indian ship remains in a shipping facility

(whether or not it entered before that date); and

(b) the ship does not comply with the anti-fouling requirements; and

(c) the ship is not a pre-2003 platform;

then the master and owner each commit an offence for each day on which the ship so remains.

Fine which may extend to one lakh Rupees for each day the ship so remains.

(VIII) Non-complying foreign ship entering Indian shipping facility

(1) If the person:

(a) on or after 17 September 2008, a foreign ship enters an Indian shipping facility; and

(b) the person is the master or owner of the ship; and

(c) the ship does not comply with the anti-fouling requirements; and

(d) the ship is not a pre-2003 platform.

Fine which may extend to twenty lakh Rupees.

(IX) Non-complying foreign ship remaining in Indian shipping facility

(1) If:

(a) on or after 17 September 2008, a foreign ship remains in Indian shipping facility

(whether or not it entered before that date); and

(b) the ship does not comply with the anti-fouling requirements; and

(c) the ship is not a pre-2003 platform;

then the master and owner each commit an offence for each day on which the ship so remains.

Fine which may extend to one lakh Rupees for each day the ship so remains.

(X) Exception for emergencies etc.

Subsections (I) to (IX) do not apply if:

- (a) the ship enters or remains (as the case may be) for the purpose of securing the safety of the ship or seeking urgent medical attention for a person on board the ship; or
- (b) the ship is under the control of a person exercising powers under an Indian law.

(XI) Failure to carry Anti-Fouling Systems certificate

(1) If the person

(a) on or after 17 September 2008, the person:

- (i) takes an Indian ship to or from a shipping facility on an international voyage; or
- (ii) permits an Indian ship to be taken to or from a shipping facility on an international voyage; and

(b) the ship has a gross tonnage of 400 or more; and

(c) the person is the master or owner of the ship; and

(d) the ship does not have on board a current Anti-fouling Systems certificate for the ship; and

(e) the ship is not a pre-2003 platform.

Fine which may extend to twenty lakh Rupees.

(XII) Failure to carry Anti-Fouling Systems certificate

(1) If the person:

(a) on or after 17 September 2008, an Indian ship with a gross tonnage of 400 tons or more enters or leaves a shipping facility on an international voyage; and

(b) the person is the master or owner of the ship; and

(c) the ship does not have on board a current Anti-Fouling Systems certificate for the ship; and

(d) the ship is not a pre-2003 platform.

Fine which may extend to twenty lakh Rupees.

(XIII) Obligation to report damage etc. to ship

(1) If:

- (a) an Indian ship has a current Anti-Fouling Systems certificate; and
- (b) something happens to the ship that affects, or might affect, its compliance with the anti-fouling requirements; and
- (c) notice of the happening is not given within 7 days after the happening;

then the master and owner each commit an offence for each subsequent day that passes without the notice having been given.

Fine which may extend to ten thousand Rupees for each subsequent day that passes.

(XIV) Obligation to carry anti-fouling declaration

(1) If the person:

- (a) on or after 17 September 2008, the person:
 - (i) takes an Indian ship to or from a shipping facility on an international voyage; or
 - (ii) permits an Indian ship to be taken to or from a shipping facility on an international voyage; and
- (b) the person is the master or owner of the ship; and
- (c) the ship is at least 24 metres in length and has a gross tonnage of less than 400 tons; and
- (d) the ship does not have on board an anti-fouling declaration for the ship; and
- (e) the ship is not a pre-2003 platform.

Fine which may extend to one lakh Rupees.

(XV) Failure to carry anti-fouling declaration

(1) If the person:

- (a) on or after 17 September 2008 an Indian ship enters or leaves a shipping facility on an international voyage; and
- (b) the person is the master or owner of the ship; and
- (c) the ship is at least 24 metres in length and has a gross tonnage of less than 400 tons; and
- (d) the ship does not have on board an anti-fouling declaration for the ship; and
- (e) the ship is not a pre-2003 platform.

Fine which may extend to one lakh Rupees.

(XVI) Failure to comply with a requirement made of the person by a surveyor under this Part

Fine which may extend to one lakh Rupees.

(XVII) If the ship leaves the shipping facility while it is under detention, then the master and owner each commits an offence.

Imprisonment which may extend to one year or fine which may extend to twenty lakh Rupees or both.

Merchant Shipping
(Control of Harmful Anti-Fouling Systems) Rules, 2008

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Merchant Shipping (Control of Harmful Anti-Fouling Systems) Rules, 2008

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Explanatory Note

for

Draft

on

**Merchant Shipping (Control of Harmful Anti-Fouling Systems) Rules,
2008**

Explanatory Note

1. Section 7 of The Merchant Shipping Act, 1958 and section 356-ZL of the Merchant Shipping (Amendment) Act, 2008 empowers the Central Government to make rules to carry out the purpose of these Acts.

2. The Parliament gives the authority for the enactment of the rules of procedure to the Central Government.

3. The Parliament has also empowered the Central Government to not only formulate rule but also the power to appoint such official as it may deem fit to carry out the function on its behalf.

4. The Central Government may by notification in the Official Gazette appoint a person to be the Director General of Shipping for the purpose of exercising or discharging the powers, authority or duties conferred or imposed upon the Director General by or under the Merchant Shipping Act, 1958.

5. The Central Government may, by a general or special order, direct that any power, authority or jurisdiction exercisable by it under or in relation to any such provisions of The Merchant Shipping Act, 1958 as may be so specified, be exercisable also by the Director General or such other officer as may be specified in the order.

6. Under section 7 of the Merchant Shipping Act, 1958 the Director General may, by general or special order, and with the previous approval of the Central Government,

direct that any power or authority conferred upon or delegated to, and any duty imposed upon, the Director General by or under the Merchant Shipping Act, 1958 may, subject to such conditions and restrictions as he may think fit to impose be exercised or discharged also by such officer or other authority as he may specify in this behalf.

7. The Central Government may establish and maintain at each of the ports of Mumbai (Bombay), Kolkata (Calcutta) and Chennai (Madras) and at such other port in India as it may consider necessary an office of the Mercantile Marine Department for the administration of the Merchant Shipping Act, 1958 and the rule and regulations there under, in accordance with section 8 of the said Act.

8. As per section 8 of the Merchant Shipping Act, 1958 the Mercantile Marine Department at each of the port of Mumbai (Bombay), Kolkata (Calcutta) and Chennai (Madras) is under the charge of a principal officer and the office at any other port is under the charge of such officer as the Central Government may appoint in this behalf. In the discharge of their duties, the principal officer and other officers shall be subject to the control of the Director General.

9. In addition to the above the Central Government may, by notification in the Official Gazette, appoint at such ports as may be considered necessary as many as it may think fit to be surveyors for the purposes of the Merchant Shipping Act, 1958 under section 9.

10. Without prejudice to the provisions of para-9 above the Central Government may in case of cargo ships, may by notification in the Official Gazette authorize any person or body of persons, on such terms and conditions as may be specified therein, to be surveyor or surveyors for the purposes of the Merchant Shipping Act, 1958.

11. The surveyors may be nautical surveyors, ship surveyors or engineer and ship surveyors.

12. At any port at which no surveyor appointed under this section is available the Central Government may, by notification in the Official Gazette, appoint any qualified person to perform the functions of a surveyor under the Merchant Shipping Act, 1958.

13. It is important to note that all acts done under the Merchant Shipping Act, 1958 by a principal officer of the Mercantile Marine Department or a person appointed under paragraph 12 above relating to matters within the competence of a surveyor shall have the same effect as if done by a surveyor for the purposes of the Merchant Shipping Act, 1958.

14. The Central Government in particular, and without prejudice to the generality of the foregoing power, to make such rules which provide for all or any of the following matters, namely:-

- a) The particulars and the manner required for issue of the International Anti-Fouling Systems certificate.
- b) Survey and the certification requirements for Anti-Fouling Systems.
- c) The manner in which notice of incidents effecting Anti-Fouling Systems are to be reported.
- d) The fee to be collected and the mode thereof.

15. The basic purpose of formulating the rules is to promulgate the procedures so as to ensure that the laws as are declared are followed in both letter and spirit.

16. The rules are formulated based on the Convention and the Act in order that the purpose of the act is served and also to ensure that effective controls are in place to assist in the compliance of the requirements of the enactment.

Draft Rules

Merchant Shipping (Control of Harmful Anti- Fouling Systems) Rules, 2008

NOTIFICATION

New Delhi, the xx (enter date) xxxx (enter month), 2008

(Merchant Shipping)

G.S.R. xx (enter number) In exercise of the powers conferred by section 356-ZL of the **Merchant Shipping (Amendment) Act, 2008.**

1. Short title commencement and application. –

(1) These Rules may be called the Merchant Shipping (Control of Harmful Anti-Fouling Systems) Rules, 2008.

2. They shall come into force on the 17th day of September 2008.

3. They shall apply to:

(1) Unless otherwise specified in this Part, this Part shall apply to:-

(a) ships entitled to fly the flag of India;

(b) ships not entitled to fly the flag of India, but which operate under the authority of the Government of India; and

(c) ships that enter a port, shipyard, or offshore terminal of India, but do not fall within subparagraph (a) or (b).

4. Definitions. –

(i) Act means the Merchant Shipping Act, 1958 (44 of 1958).

(ii) Director General means the Director General of Shipping appointed under Section 7 of the Merchant Shipping Act, 1958.

(iii) Principal Officer means an officer referred to in sub-section (2) of section 8 of the Merchant Shipping Act, 1958.

(iv) surveyor means a person appointed or authorized in this behalf by the Central Government under Section 9 of the Merchant Shipping Act, 1958.

(v) approved means approved by the Director General.

(vi) ship means a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft, fixed or floating platforms, floating storage units (FSUs) and floating production storage and off loading units (FPSOs).

(vii) Indian ship means:

(a) a ship registered, or required to be registered, under the Merchant Shipping Act, 1958;
or

(b) an unregistered ship that has Indian nationality under the Merchant Shipping Act, 1958.

(viii) Gross tonnage means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex-1 to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention.

(ix) length means the length as defined in the International Convention on Load Lines, 1966, as modified by the Protocol of 1988 relating thereto, or any successor Convention.

(x) designated external surface means any part of the hull or external parts or surfaces. For this purpose, hull or external parts or surfaces has the same meaning as in the Convention.

(xi) Annex means the annex to these rules.

5. Compliance with the anti-fouling requirements.—

A ship complies with the anti-fouling requirements if:

- (a) it has no HAFC applied on any designated external surface; or
- (b) each HAFC that is applied on any designated external surface has a coating that forms a barrier to the HAFC leaching into the water.

6. Obligation to carry Anti-Fouling Systems certificate.--

The International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001(AFS 2001) will come into force on 17 September 2008. Once the Convention enters into force, a ship (excluding pre-2003 platform) of 400 gross tonnage and above shall carry an "International Anti-Fouling Systems Certificate" issued by the Director General in the form corresponding with Annexes-5 & 6.

7. Obligation to carry anti-fouling declaration.—

Once the Convention enters into force a ship of 24 metres or more in length, but less than 400 gross tonnage, engaged in international voyages (excluding fixed or floating platforms, FSUs, and FPSOs) shall carry a declaration signed by the owner or owner's authorized agent in the form corresponding with Annex-8. Such declaration shall be accompanied by appropriate documentation (such as a paint receipt or a contractor invoice) or contain appropriate endorsement in the form corresponding with Annex-8.

8. Initial certificate

(1) If:

- (a) surveyor surveys an Indian ship of 400 gross tonnage and above, for the purpose of determining whether the ship complies with the anti-fouling requirements; and
- (b) the ship does not have a current International Anti-Fouling Systems certificate; and
- (c) on the basis of the survey, the surveyor is satisfied that the ship complies with the anti-fouling requirements;

then the surveyor must issue an International Anti-Fouling Systems certificate in respect of the ship, in the form corresponding with Annexes-5 & 6.

9. Endorsement of existing certificate. –

(1) If:

- (a) a surveyor surveys an Indian ship with a gross tonnage of 400 tons and above, for the purpose of determining whether the ship complies with the anti-fouling requirements; and
- (b) the ship has a current International Anti-Fouling Systems certificate, but needs an endorsement in order for the certificate to continue in effect; and
- (c) on the basis of the survey, the surveyor is satisfied that the ship complies with the anti-fouling requirements; then the surveyor must endorse the International Anti-Fouling Systems certificate in the form corresponding with Annex-7.

10. Initial surveys. –

1.(a) The owner of every ship shall cause the same to be subjected to an initial survey on completion or when a ship is acquired from a foreign owner and registered as an Indian Ship. There after to be surveyed by a surveyor if any changes have been made to the Anti-Fouling Systems or casualty has been caused to the ship affecting the Anti-Fouling Systems.

(b) Subject to the provisions of sub-rule (c), the surveyor shall survey the ship to satisfy himself that the arrangements comply with the requirements of these rules and are in all respects satisfactory for the service for which the ship is intended.

(c) For the purposes of initial survey of a ship acquired second hand and registered as an Indian ship, the initial survey carried out prior to the acquisition may be taken into account.

(d) The hull and machinery of any ship may be surveyed on running (continuous) survey basis, that is to say all parts of the hull structure machinery equipment appliances and other parts of the ship which are required to be surveyed need not be surveyed on one occasion but may be surveyed on different occasions:

2. (a) Provided that all parts where Anti-Fouling Systems have been applied to of such ship shall be surveyed. For this purpose, a proper schedule of running surveys shall be drawn up and approved by the Principal Officer for ships and surveys by surveyors of the Mercantile Marine Department or by the organization notified under section 9 of the Act where such surveys are authorized to be carried out by them.

(b) The owner of every ship in respect of which a International Anti-Fouling Systems certificate has been issued shall be so long as the certificate remains in force cause the ship to be surveyed if the anti-fouling system is changed or replaced and the certificate is not endorsed and upon transfer of the ship to the Indian flag by a surveyor in the manner specified in sub-rule 9(1)(c) for the purpose of seeing whether the certificate should remain in force and if the ship is not so surveyed the Principal Officer may cancel the certificate.

3. (a) The survey to be carried out shall be as follows:--

(i) the examination of the lower external areas of the hull structure shall be conducted whilst the ship is out of water except where the Chief Surveyor with the Government of India otherwise permits.

(ii) shall be examined externally, only if the Principal Officer is satisfied and as the Chief Surveyor with the Government of India may permit.

11. Survey.--

1. The surveyor shall, upon receipt of an application, survey the ship in accordance with the procedures specified:

(a) In general the scope of the survey should consist of examination of ship's certificates. The examination of the ship's certificates in general should consist of checking:

(i) the validity of the International Anti-Fouling Systems certificate of the ship.

(ii) verifying the ship's Anti-Fouling Systems based on Material Safety Data Sheet (MSDS) or similar document submitted by the ship-owner or the ship operator.

(b) a visual examination of sufficient extent to confirm that the condition is being properly maintained.

(i) that the ship does not bear anti-fouling paints containing organotin compounds which act as biocides on the hull or external parts or surfaces ; or

(ii) the organotin ship paints have been re-coated by non-organotin ship-bottom paints after ballasting, or have been covered by sealer coats.

(c) It should also include a visual examination to confirm that no unauthorized modifications have been made to the Anti-Fouling Systems of the ship.

(i) that such of the parts of the ship as are the subject of the application for surveyor remain efficient, and

(ii) that no material alterations have been made in the hull, or equipment of the ship to which the International Anti-Fouling Systems certificate relates which effects the Anti-Fouling Systems without the approval of the Director General.

2. The thoroughness or stringency of the survey should depend upon the documents produced for inspection and the condition of the Anti-Fouling Systems of the ship.

12. Survey of the hull.--

(1) The hull survey should consist of:

- (a) an examination of the record of surveys and inspections for the hull;
- (b) a general visual examination where feasible;
- (c) confirming as far as is practicable that Anti-Fouling Systems has been applied and that no significant changes have been made to it;
- (d) a general examination of the hull and other appliances so far as can be seen;
- (e) an examination of the shell including the bottom and bow plating keel, stem, stern frame and rudder; and
- (f) an examination of the sea connections for the application of the Anti-Fouling Systems.

(2) Should any doubt arise as to the Anti-Fouling Systems of the ship and its application condition on the ship, further examination and testing should be conducted as the surveyor deems necessary:

- (a) The hull or any part of the ship to which Anti-Fouling Systems have been applied shall be completely examined for surface and volumetric flaws by non-destructive testing techniques and procedures acceptable to the Chief Surveyor with Government of India.
- (b) The equipment and procedures for measuring and recording shall be generally in accordance with the provisions adopted by IMO.

13. Application for survey.--

(1) Applications for Survey shall be made to the Principal Officer at the Port of Mumbai (Bombay), Kolkata (Calcutta) or Channei (Madras), the Surveyors in charge of Mercantile Marine Department at the ports of Jamanagar, Mormugao, Kochi (Cochin), Tuticorin, Vishakhapatnam, and Port Blair.

(2) every such application shall be made in the form corresponding with Annex-1 by the owner, master or agent and shall, wherever necessary be accompanied by necessary plans, data and calculations required to satisfy compliance with these rules.

14. Preparation for survey.--

The owner master or agent shall make all requisite arrangements and preparations for the conduct of the survey, if such preparations are not made by the appointed time of survey, the surveyor may postpone the survey to some other time.

15. Port of survey.--

Surveys of ships shall be conducted at the ports of Mumbai (Bombay), Collate (Calcutta) or Chennai (Madras), Kochi (Cochin), Vishakapatnam, Mormugao , Bedi Bunder, Tuticorin, and Port Blair or at any other port, if the Director General so directs.

16. Fees. –

(1) Every application shall be accompanied by fees in accordance with the scales set out in the Annex- 2

(2) No application for survey shall be entertained unless fees are paid in advance in accordance with sub-rule (1).

17. Conduct of Survey. –

Where in respect of any application for survey of a ship, appropriate fees have been paid and necessary preparations facilitating such surveys are completed the surveyor

nominated by the Principal Officer shall survey the ship at the appointed time or at any other time manually convenient.

18. Declaration of survey. --

On completion of an initial survey in accordance with the requirements of these rules the surveyor shall, where he is so satisfied;

(I) In the case of initial survey as required by rule 8 forward to the Principal Officer, a declaration of survey containing such particulars of the ship in the form corresponding with Annex-3 completed by the owner or the owner's authorized agent and Annex-4 completed by the surveyor in respect of the ship.

19. Surveys by authorized organizations.--

The provisions of rule 13, 14, 15, 16, and 17 shall not apply in the case of any ship which is surveyed by an organization notified under section 9 of the Act in which case, the rule of such organization shall be applicable in lieu of the rules aforesaid.

20. Manufactures instructional manual and type of anti-fouling used.--

(1) The manufacture shall supply a copy of the instruction manual for type of anti-fouling used. This manual shall be kept on board the ship shall include the following information:-

- (a) installation and application instructions;
- (b) operating instruction;
- (c) maintenance requirements including the frequency and method of cleaning;
- (d) A copy of the laboratory report; and

(e) Details of the active ingredients and their Chemical Abstracts Service Registry Numbers (CAS number(s)).

(2) The information provided should be such that the supportive link between documentation and the relevant container(s) of the Anti-Fouling Systems applied exists.

21. Annexes.--

The annexes to these rules form an integral part of the rules. Unless expressly provided otherwise; a reference to the rules constitutes at the same time a reference the annexes.

Annex-1

[See rule 13]

APPLICATION FOR SURVEY OR INSPECTION

In order to avoid delay, not less than 72 hours notice should be given for surveys or Inspection at Mumbai (Bombay), Kolkata (Calcutta) or Chennai (Madras), Kochi (Cochin), Vishakapatnam, Mormugao. For other ports as much notice as possible should be given.

To

The Principal Officer/Surveyor

Mercantile Marine Department.

..... District.

Sir,

I beg to apply for the Survey the ship for issue of International Anti-Fouling Systems Certificate. I forward the survey fee Rs.

herewith and agree to pay the expenses and balance of fees which may be properly chargeable in connection with the case.

Dated.....

Signature.....

Full Address:

Designation.....

Particulars of the ship

1. Name of ship/yard No.....
2. Port of registry.....
3. IMO number or Official No (if applicable).....
4. Gross Tonnage.....
5. Hull when and where built/Date
on which keel laid or similar stage of construction.....
6. Intended Voyage or service.....
7. Name and address of owners or agents or
ship(s).....
.....
8. Name and telephone number of Marine/Engineer Superintendent or
agent responsible for arranging survey.....
9. Details of last Certificate or other certificate and details of survey
.....
10. Documents forwarded with the application.....
11. Particulars of casualties to the ship since her last survey (if any).....
.....
12. Place where and, date and hours when the ship will be ready for survey
.....
13. Any special remarks.....

(To be filled in at the Mercantile Marine Department)

The fees of Rs. -----as been duly received

and receipt no. -----has been granted.

Passed to the following Surveyor/Surveyors for necessary action:-

.....

Dated.....

Principal Officer District

Noted

.....

Dated.....

Surveyor(s)

Annex-2

(see rule 16(1))

Table of fees payable for Surveys conducted for the purposes of issue of an
International Anti-Fouling Systems certificate.

Gross Tonnage of Ship	Initial Survey	Periodical Survey	Intermediate
1	2	3	4
more than 400 tons	Rs. 2,000/-	Rs. 600/-	Rs. 300/-
500 tons & above but less than 1000 tons	Rs. 4,000/- Rs. 5,000/-	Rs. 1,000/- Rs. 1,200/-	Rs. 300/- Rs. 300/-
1000 tons & above but less than 5000 tons.	Rs. 5,000/- for first 1000 tons gross plus Rs. 250/- for every 100 tons more, or part thereof	RS. 1200/- for first 1000 tons gross plus Rs.45/- for every 100 tons more, of part thereof	Rs. 300/- for first 1000 tons plus Rs. 10/- for every 100 tons more, or part thereof
5000 tons & above but less than 10000 tons	Rs. 15,000/- for first 5000 tons gross plus Rs. 200/- for every 100 tons more, or part thereof	Rs. 3,000/- for first 5000 tons gross plus Rs. 30/- for every 100 tons more, or part thereof.	Rs. 700/- for first 5000 tons gross plus Rs.8/-for every 100 tons more, or part thereof
10000 tons & above but less than 15000 tons	Rs. 25,000/- for first 10000 tons gross plus Rs.150/- for every 100 tons more, of thereof.	Rs. 4,500/- for first 10000 tons gross plus Rs.20/- for every 100 tons more, or part thereof.	Rs. 1,100/- for first 10000 tons gross plus Rs. 5/- for every 100 tons or part thereof.
15000 and over	Rs. 32,500/- for first 15000 tons gross plus Rs.100/- for every 100 tons more or part thereof.	Rs.5,500/- for first 15000 tons gross plus Rs. 15/- for every 100 tons more, or part thereof.	Rs, 13,50/- for first 15000 tons gross plus Rs. 4/- for every 100 tons more, or part thereof.

The fees specified in sub-para (1) shall be deemed to cover any number of visits which a Surveyor may have to make for granting certificate of survey.

Where vessels are surveyed on the "running survey" principle, an additional fee equivalent to one third of the fee as may be payable in respect of survey under these Rules shall be paid.

Overtime Fees

The charging overtime fees in respect of surveys or inspection wholly or partially carried out outside office hours shall be regulated as follows :-

(a) Where on the application of the builder, owner or master of a ship, the surveyor is called upon to undertake the survey or inspection of the vessel after 5 p.m. but before 8 p.m. and between 6 a.m. and 9 a. m. additional fees of Rs.500 shall be charged.

(b) Where the work falls between 8 p.m. and 6 a. m an additional fee of Rs. 500 shall be.

(c) Where a surveyor is detained at the request of the builder owner or agent after 5 p. m. to complete a survey undertaken between 9 a. m.and 5 p. m. an additional fee of Rs 500 shall be charged if the surveyor is released from duty by 8 p. m. and Rs.1500, if is detained later than 8 p.m.

(d) Where the owner or master of the ship has asked for survey between the hours of 9 a. m. and 5 p. m. and official arrangements have not allowed for the work being done between those hours, no additional fee shall be chargeable.

(e) Where a surveyor is called upon to undertake the surveyor or inspection of a vessel on any Sunday Saturday or other Public Holiday, an additional fee of Rs. 1000 shall be charged.

(f) Where a surveyor has been called upon as specified in clause (a) (b) and (c) or detailed as specified in clause. (e). the owner or master of the ship shall give information of the fact in writing to the Principal Officer, Mercantile Marine Department of the Port stating the hours during which the surveyor was in attendance.

Annex-3

[See rule 18(1)]

Government of India

Director General of Shipping

**Issued under the Merchant Shipping (Control of Harmful Anti-Fouling Systems)
Rules, 2008**

DECLARATION ON ANTI-FOULING SYSTEMS CERTIFICATE

Drawn up under the International Convention on the Control of Harmful
Anti-Fouling System on Ships, 2001(AFS 2001)

Name of Ship.....

Distinctive number or letters.....

Port of Registry.....

Length.....

Gross Tonnage.....

IMO number (if
applicable).....

I declare that the Anti-Fouling Systems used on this ship complies with
annex 1 of the Convention.

.....

(Date)

(Signature of owner or owner's authorized agent)

Endorsement of Anti-Fouling System(s) applied

Type(s) of Anti-Fouling System(s) used and date(s) of application

.....

.....

Date..... (Signature of owner or owner's authorized agent)

Type(s) of Anti-Fouling System(s) used and date(s) of application
.....
.....

Date..... (Signature of owner or owner's authorized agent)

Type(s) of Anti-Fouling System(s) used and date(s) of application
.....
.....

Date..... (Signature of owner or owner's authorized agent)

Annex-4

[See rule 18]

**Report of Survey issued under
Merchant Shipping (Control of Harmful Anti-Fouling Systems) Rules, 2008**

Name of ship.....

IMO No.....

Port of Registry.....

Gross tonnage.....

Particulars of current International Anti-Fouling Systems certificate:--

(a) Port of issue.....

(b) Issuing authority.....

(c) Date of issue.....

(d) Date on which survey carried out.....

(e) Place of survey.....

THIS IS TO CERTIFY THAT:

1 the ship has been surveyed in accordance with regulation 1 of Annex 4 to the Convention; and

2 the survey shows that the Anti-Fouling systems on the ship complies with the applicable requirements of Annex 1 to the Convention;

3. It is certified that a survey of the above mentioned ship has been carried out and the ship complies with the Merchant Shipping (Control of Harmful Anti-Fouling Systems) Rules, 2008.

It is recommended that the International Anti-Fouling Systems certificate issued to the above ship may remain in force.

The survey required in accordance with regulation 1(1) (b) of Annex 4 to the Convention found the ship was in compliance with the Convention.

The Endorsement of the Records to the International Anti-Fouling Systems certificate has been duly endorsed.

Signature and name of the Surveyor

Name and Address of Organization/Classification Society.

Official Seal

Place.....

Date.....

*cut out whichever is not applicable.

Annex-5
[See rule 6 & 8]

Government of India

Director General of Shipping

INTERNATIONAL ANTI-FOULING SYSTEMS CERTIFICATE

(This certificate shall be supplemented by a Record of Anti-Fouling Systems)

(Official seal) (State)

**Issued under the International Convention on the Control of Harmful Anti-Fouling
Systems on Ships, 2001 (AFS 2001) under the authority of the**

Government of India

by

.....
(person or organization authorized)

When a Certificate has been previously issued, this Certificate replaces the certificate
dated

Particulars of ship¹

Name of ship

.....
Distinctive number or letters

.....
Port of registry

.....
Gross tonnage

.....
IMO number

.....
An Anti-Fouling System controlled under Annex 1 has not been applied during or after
construction of
this ship

.....
An Anti-Fouling System controlled under Annex 1 has been applied on this ship
previously, but has
been removed by *(insert name of the facility)* on *(date)*

.....
An Anti-Fouling System controlled under Annex 1 has been applied on this ship
previously, but has
been covered with a sealer coat applied by *(insert name
of the facility)*
.....on..... *(date)*

An Anti-Fouling System controlled under Annex 1 was applied on this ship prior to..... (date)³, but must be removed or covered with a sealer coat prior to (date)⁴.....¹

1 Alternatively, the particulars of the ship may be placed horizontally in boxes.

2 In accordance with the IMO Ship Identification Number Scheme adopted by the Organization with Assembly resolution A.600(15).

3 Date of entry into force of the control measure.

4 Date of expiration of any implementation period specified in article 4(2) or Annex 1.

THIS IS TO CERTIFY THAT:

1 the ship has been surveyed in accordance with regulation 1 of Annex 4 to the Convention;

and

2 the survey shows that the Anti-Fouling System on the ship complies with the applicable requirements of Annex 1 to the Convention.

Issued

at.....
.....

..... (Place of issue of Certificate)

.....
(Date of issue) (Signature of authorized official issuing the Certificate)

Date of completion of the survey on which this certificate is issued:.....

Annex-6
[See rule 6 & 8]

Government of India

Director General of Shipping

FORM OF RECORD OF ANTI-FOULING SYSTEMS
RECORD OF ANTI-FOULING SYSTEMS

This Record shall be permanently attached to the International Anti-Fouling Systems certificate.

Particulars of ship

Name of ship :

Distinctive number or letters :

IMO number :

Details of Anti-Fouling System(s) applied

Type(s) of Anti-Fouling System(s) used

.....
.....
.....

Date(s) of application of Anti-Fouling

System(s).....

Name(s) of company (ies) and facility (ies)/location(s) where applied

.....
.....
.....

Name(s) of Anti-Fouling System

manufacturer(s).....

.....

Name(s) and colour(s) of Anti-Fouling

System(s).....

.....

Active ingredient(s) and their Chemical Abstract Services Registry Number(s) (CAS number(s))

.....
.....

Type(s) of sealer coat, if applicable

.....
.....
.....

Name(s) and colour(s) of sealer coat applied, if applicable

.....
.....

Date of application of sealer

coat.....

THIS IS TO CERTIFY that this Record is correct in all respects.

Issued

at.....

(Place of issue of Record)

.....

(Date of issue) (Signature of authorized official issuing the record)

Annex-7
[See rule 9]

Government of India

Director General of Shipping

Endorsement of the Records

THIS IS TO CERTIFY that a survey required in accordance with regulation 1(1)(b) of Annex 4 to the Convention found that the ship was in compliance with the Convention

Details of Anti-Fouling System(s) applied

Type(s) of Anti-Fouling System(s)

used.....

.....

.....

Date(s) of application of Anti-Fouling

System(s).....

Name(s) of company(ies) and facility(ies) location(s) where
applied.....

.....

.....

Name(s) of Anti-Fouling System(s)

manufacturer(s).....

.....

.....

Name(s) and colour(s) of Anti-Fouling System(s)

.....

.....

.....

Active ingredient(s) and their Chemical Abstract Services Registry Number(s) (CAS
number(s) ...

.....

.....

Type(s) of sealer coat, if applicable

.....

Name(s) and colour(s) of sealer coat applied, if applicable

.....

.....

Date of application of sealer coat

.....

Signed:

(Signature of authorized official issuing the Record)

Place:

Date:

(Seal or stamp of the authority)

6 Date of completion of the survey on which this endorsement is made.

Annex-8
[See rule 7]

FORM OF DECLARATION ON ANTI-FOULING SYSTEM

DECLARATION ON ANTI-FOULING SYSTEM

Drawn up under the

**International Convention on the Control of Harmful Anti-Fouling Systems on Ships,
2001 (AFS 2001)**

Name of ship

.....

Distinctive number or letters

.....

Port of registry

.....

Length

.....

Gross tonnage

.....

IMO number (if applicable)

.....

I declare that the Anti-Fouling System used on this ship complies with Annex 1 of the
Convention.

.....

(Date) (Signature of owner or owner's authorized agent)
Endorsement of Anti-Fouling System(s) applied

Type(s) of Anti-Fouling System(s) used and date(s) of
application.....

.....

.....

.....

(Date) (Signature of owner or owner's authorized agent)

Type(s) of Anti-fouling System(s) used and date(s) of
application.....

.....

.....

.....

(Date) (Signature of owner or owner's authorized agent)

Type(s) of Anti-Fouling System(s) used and date(s) of application.....

.....

.....

(Date) (Signature of owner or owner's authorized agent)

(File number.)

Sd—

Name

Director or

Secretary of Shipping

Government of India