Commission Regulation (EC) No 536/2008 of 13 June 2008 giving effect to Article 6(3) and Article 7 of Regulation (EC) No 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships and amending that Regulation

COMMISSION REGULATION (EC) No 536/2008

of 13 June 2008

giving effect to Article 6(3) and Article 7 of Regulation (EC) No 782/2003 of the European Parliament and of the Council on the prohibition of organotin compounds on ships and amending that Regulation

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 782/2003 of the European Parliament and of the Council of 14 April 2003 on the prohibition of organotin compounds on ships[(1)], and in particular Article 6(3), Article 7, second paragraph, and Article 8 thereof,

Whereas:

(1) Regulation (EC) No 782/2003 requires the Commission to adopt a number of measures in order to give effect to that Regulation if the International Convention on the control of harmful anti-fouling systems on ships (hereinafter referred to as the AFS-Convention), adopted on 5 October 2001, has not entered into force by 1 January 2007.

(2) The AFS-Convention has not yet entered into force.

(3) It is therefore necessary to adopt measures in order to allow ships flying the flag of a third State to demonstrate their compliance with Article 5 of Regulation (EC) No 782/2003, and to provide for port State control.

(4) Article 8 of Regulation (EC) No 782/2003 provides that the Regulation may be amended in order to take account of developments at international level and in particular in the International Maritime Organisation (hereinafter referred to as the IMO), or to improve the effectiveness of the Regulation in the light of experience.

(5) The IMO Marine Environment Protection Committee (hereinafter referred to as the MEPC), in accordance with Article 1(4)(a) of Annex 4 to the AFS-Convention, adopted Guidelines for Survey and Certification of Anti-Fouling Systems on Ships by means of Resolution MEPC.102(48) on 11 October 2002.

(6) The MEPC, in accordance with Article 11(2) of the AFS-Convention, adopted Guidelines for Inspection of Anti-Fouling Systems on Ships by means of Resolution MEPC.105(49) on 18 July 2003.

(7) The MEPC, in accordance with Article 11(1) of the AFS-Convention, adopted on Guidelines for Brief Sampling of Anti-Fouling Systems on Ships by means of Resolution MEPC.104(49) on 18 July 2003.

Changes to legislation: *There are outstanding changes not yet made to Commission Regulation (EC) No 536/2008. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(8) Until the entry into force of the AFS-Convention, it is appropriate to apply its provisions to ships flying the flag of a State which is a Party to the said convention. Similarly, ships flying the flag of a State which is not a Party to the AFS-Convention should not receive a more favourable treatment within the Community.

(9) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Safe Seas and the Prevention of Pollution from Ships, established by Regulation (EC) No 2099/2002 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

The purpose of this Regulation is to:

— establish measures in order to allow ships flying the flag of a third State that enter a port or offshore terminal of a Member State to demonstrate their compliance with Article 5 of Regulation (EC) No 782/2003,

— establish procedures for control by the port State within the Community, and

— amend the references to the AFS-Statement of Compliance in Regulation (EC) No 782/2003 and Annex I to that Regulation.

Article 2

1 Ships referred to in Article 3(1)(c) of Regulation (EC) No 782/2003 shall demonstrate their compliance with Article 5 of that Regulation in accordance with paragraphs 2, 3 and 4 of this Article.

2 During the interim period ships flying the flag of a State which is a Party to the International Convention on the control of harmful anti-fouling systems on ships (hereinafter referred to as the AFS-Convention) shall demonstrate their compliance with Article 5 of Regulation (EC) No 782/2003 by means of a Statement of Compliance in accordance with paragraph 5.4.1 of the guidelines for surveys and certification of anti-fouling systems on ships annexed to Resolution MEPC.102(48) of the Marine Environment Protection Committee of the International Maritime Organisation (hereinafter referred to as the MEPC).

3 As from the entry into force of the AFS-Convention ships flying the flag of a State which is a Party to the AFS-Convention shall demonstrate their compliance with Article 5 of Regulation (EC) No 782/2003 by means of an International Anti-Fouling System Certificate in accordance with Annex 4 to the AFS-Convention.

4 Ships flying the flag of a State which is not a Party to the AFS-Convention, shall demonstrate their compliance with Article 5 of Regulation (EC) No 782/2003 by means of a Statement of Compliance delivered by the Administration of the flag State by applying the provisions of Article 10 of the AFS-Convention, in conjunction with Annex 4 thereto and the guidelines for surveys and certification of anti-fouling systems on ships annexed to Resolution MEPC.102(48) of the MEPC. For the purpose of this paragraph the references made in the said Article, Annex and guidelines to the International Anti-Fouling System Certificate shall be construed as references to the Statement of Compliance.

Article 3

1 During the interim period Member States shall apply control provisions equivalent to those laid down in Council Directive 95/21/EC[(3)] to ships falling within the scope of Regulation (EC) No 782/2003 in accordance with paragraphs 2 and 3 of this Article.