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COMMISSION STAFF WORKING DOCUMENT

Union submission to International Maritime Organization's 8th session of the Sub-Committee on Ship Design and Construction commenting on SDC 8/14/xx submitted by Canada *et al* proposing to revise the *Guidelines for the reduction of underwater noise from commercial shipping to address adverse impacts on marine life*

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PURPOSE

This Staff Working Document contains a draft Union submission to the International Maritime Organization's (IMO) 8th session of the Sub-Committee on Ship Design (SDC 8). The IMO has indicatively scheduled SDC 8 from 17 to 21 January 2022.

The draft submission comments on SDC 8/14/xx by Canada *et al*. In SDC 8/14/XX, Canada *et al* note the barriers to the uptake of the 2014 *Guidelines for the reduction of underwater noise from commercial shipping to address adverse impacts on marine life*. The document also makes suggestions and recommendations for their revision.

At the 76th Marine Environment Protection Committee in 2020, the EU submitted the commenting document (MEPC 75/14/2) to support the establishment of the mentioned output as proposed by Canada. This previous submission highlighted the relevance of the EU experience in reducing and managing underwater noise in EU marine waters. The EU should continue to insist on progress being made on the topic.

EU COMPETENCE

Directive 2008/56/EC[1], the Marine Strategy Framework Directive, sets out eleven descriptors as the basis for determining 'good environmental status', which is the Directive's main objective. The 11th descriptor reads: "Introduction of energy, including underwater noise, is at levels that do not adversely affect the marine environment." In addition, underwater noise is implicitly covered by overarching directives, e.g. the Habitats and Birds Directives (Council Directive 92/43/EEC[2] and Council Directive 79/409/EEC[3]) and the Environmental Impact Assessment Directive[4].

The Marine Strategy Framework Directive defines human-induced marine underwater noise as a pollutant and requires Member States to ensure that anthropogenic noise is at levels that do not adversely affect the marine environment. The Directive further requires Member States to address the effects at an ecosystem level and ensure coordination in marine regions, leading to programmes of measures that achieve or maintain good environmental status in all EU seas.

Commission Decision (EU) 2017/848[5] sets out criteria and methodological standards to assess the extent to which good environmental status is achieved. It operationalises the descriptors of the Marine Strategy Framework Directive. This includes criteria and methodological standards for underwater noise.

In order to green shipping under the European Green Deal, the Sustainable and Smart Mobility Strategy and the Zero pollution action plan (ZPAP)[6] set specific actions to reduce underwater noise. In particular, the ZPAP sets the target of adopting threshold values for under water noise by 2022.

[1] OJ L 164, 25.6.2008, p. 19–40
[2] OJ L 206, 22.7.1992, p. 7–50
[3] OJ L 103, 25.4.1979
[4] OJ L 124, 25.4.2014, p. 1–18
[5] OJ L 125, 18.5.2017, p. 43–74
[6] Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. COM(2021) 400. Pathway to a Healthy Planet for All EU Action Plan: 'Towards Zero Pollution for Air, Water and Soil' communication_en.pdf (europa.eu)

In light of all of the above, the present draft Union submission falls under EU exclusive competence.[7] This Staff Working Document is presented to establish an EU position on the matter and to transmit the document to the IMO prior to the required deadline of 26 November 2021.[8]

[7] An EU position under Article 218(9) TFEU is to be established in due time should the IMO Maritime Safety Committee eventually be called upon to adopt an act having legal effects as regards the subject matter of the said draft Union submission. The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*' (Case C-399/12 Germany v Council (OIV), ECLI:EU:C:2014:2258, paragraphs 61-64). The present submission, however, does not produce legal effects and thus the procedure for Article 218(9) TFEU is not applied.

[8] The submission of proposals or information papers to the IMO, on issues falling under external exclusive EU competence, are acts of external representation. Such submissions are to be made by an EU actor who can represent the Union externally under the Treaty, which for non-CFSP (Common Foreign and Security Policy) issues is the Commission or the EU Delegation in accordance with Article 17(1) TEU and Article 221 TFEU. IMO internal rules make such an arrangement possible as regards existing agenda and work programme items. This way of proceeding is in line with the General Arrangements for EU statements in multilateral organisations endorsed by COREPER on 24 October 2011.

SUB-COMMITTEE ON SHIP DESIGN AND CONSTRUCTION
8th session
Agenda item 14

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REVIEW OF THE GUIDELINES FOR THE REDUCTION OF UNDERWATER NOISE (MEPC.1/CIRC.833)

Comments to document SDC 8/14/xx

Submitted by the European Commission on behalf of the European Union

SUMMARY

Executive summary:	This document provides comments on document SDC 8/14/xx and identifies possible additional steps, besides the review of the guidelines for the reduction of underwater noise (MEPC.1/CIRC.833), that could help to reduce underwater noise.
Strategic direction, if applicable:	1, 2 and 3
Output:	
Action to be taken:	Paragraph 12
Related documents:	MEPC 75/14; MEPC.1/Circ.883, SDC 8/14/xx

Introduction

1 This document is submitted in accordance with paragraph 6.12.5 of the Guidelines of the Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC-MEPC.1/Circ.5/Rev.2). It comments on document SDC 8/14/xx submitted by Canada on the review of the guidelines for the reduction of underwater noise (MEPC.1/CIRC.833) and identifies possible next steps.

2 At its 76th session in June 2021, the Marine Environment Protection Committee (MEPC) accepted the proposal from Australia *et al* to review the *2014 Guidelines for the reduction of underwater noise from commercial shipping to address adverse impacts on marine life (MEPC.1/Circ.833) (2014 Guidelines) and identification of next steps*. The issue of underwater noise will therefore be added to the work programme of MEPC and was referred to the Sub-committee on Ship Design and Construction (SDC) for action.

Background

3 In SDC 8/14/xx, Canada *et al* note the barriers to the uptake of the 2014 Guidelines and makes suggestions and recommendations for their revision. The European Union invites the Sub-Committee to consider these recommendations for revision.

4 Ships are known to be a primary contributor to anthropogenic noise in the oceans. Underwater radiated noise (URN) levels have increased faster than the size of the world fleet, with this trend set to continue. Despite the potentially harmful impacts of URN on marine fauna, and a significant body of knowledge from research projects, the subject currently has a low priority compared to other sustainability concerns within the shipping industry, such as greenhouse gas (GHG) emissions. Moreover, the absence of (international) policy and noise limits is slowing progress on mitigation.

5 In the EU, underwater noise is addressed by the Marine Strategy Framework Directive (MSFD)[9]. It dedicates one of the specific qualitative descriptors to define good environmental status to the introduction of energy, including underwater noise[10]. Under the MSFD, cooperation at European level is ongoing and steered by the Technical Group on Underwater Noise[11] to establish threshold values, as required by European Commission Decision (EU) 2017/848 of 17 May 2017. Under the MSFD, EU Member States are required to develop programmes to monitor underwater noise as part of their marine strategies. In this regard, various measures are also being implemented, aiming at maintaining noise at levels that do not cause harm to marine ecosystems. These include defining specific areas to address/control both impulsive and continuous noise, developing eco-friendly ships, raising awareness, carrying out research and developing guidelines for noise assessments. This work contributes to further understand the actual impacts of this pressure, achieve reduction goals and develop noise management plans to reduce the underwater noise. This work is also in line with the European Green Deal objectives, notably on Sustainable Transport and Zero Pollution[12].

6 The MSFD also recognises the Regional Sea Conventions as very important frameworks for the coordination of their actions in marine waters shared by the relevant littoral states. This has proven essential for the development of monitoring programmes of underwater noise at regional level and could also be of particular relevance for future work aiming at reducing underwater noise at the global level. In the absence of mandatory requirements, effective guidelines leading to noise mitigation are paramount taking into account the need to also maintaining the level playing field and the competitiveness of shipbuilding and shipping sectors.

Proposals for next steps

7 Uncertainty in quantifying noise, among other issues, has prevented widespread action on mitigation. However, the monitoring of underwater noise through modelling and direct observations is rapidly evolving. This includes the simplification of ship noise measurements, with several studies on the use of onboard sensors and drones recently published. Such technologies could help increase the amount of data available, as well as reduce costs for shipowners. Underwater noise monitoring, either through dedicated or opportunistic measurements and with the inclusion of an open, advanced and integrated computational modelling programme, is a key activity. It can support developing and implementing mitigation measures, and ultimately provide added value to all stakeholders.

[9] https://ec.europa.eu/environment/marine/eu-coast-and-marine-policy/marine-strategy-framework-directive/index_en.htm

[10] https://ec.europa.eu/environment/marine/good-environmental-status/descriptor-11/index_en.htm

[11] The technical group on underwater noise ("TG Noise") was set up in 2011 to advise EU Member States on the operational implementation of descriptor 11 to define good environmental status. It is a sub-group of a European Commission expert group under COMMISSION DECISION of 30.5.2016.

[12] https://ec.europa.eu/environment/pdf/zero-pollution-action-plan/communication_en.pdf

8 Baselining or understanding the underwater noise generated by ships is equally relevant for the implementation of mitigation measures. Harmonising the standards and methods, including related terminology (e.g. ambient noise vs background noise), on underwater noise measurement but also for modelling, is necessary to support a multi-disciplinary approach to noise impact and mitigation.

9 Although several policies are being developed and implemented at different levels for managing underwater noise, only the 2014 IMO guidelines provide global recommendations for underwater noise reduction from shipping. However, Regional Sea Conventions such as OSPAR[13], HELCOM[14] and Barcelona Convention[15], and the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS)[16] as well as through the Convention on Biological Diversity (CBD)[17], and the Convention on Migratory Species (CMS)[18] have also developed initiatives.

10 Given the wide range of activities being performed by multiple stakeholders in relation to underwater noise of shipping, better research efficiency and noise management could be significantly enhanced by establishing a mechanism for information sharing at global level. A common repository where results and lessons learned are shared, would improve standardisation, ensure the efficient sharing and reuse of data and provide a quick overview of existing information and missing data. At the same time, promoting long-term monitoring programmes would increase transparency and raise awareness on the ongoing research projects.

11 Several MEPC submissions have highlighted the growing scientific evidence of the impact of noise on marine ecosystems and the need for further action by the international community. The co-sponsors are of the opinion that the Subcommittee could consider in its discussions the possibilities for setting special control areas including for underwater noise, areas where the cumulative impact on marine fauna is reduced to a minimum. For example, a proposal to establish a Particularly Sensitive Sea Area in the north-west Mediterranean for the protection of cetaceans has been launched in 2019 in the context of the Agreement on the Conservation of Cetaceans in the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) is under consideration for the north-west Mediterranean.

Action requested of the Sub-Committee

12 The Sub-Committee is invited to consider the information above, in particular paragraphs 7 to 11, and take action as deemed appropriate. Consideration should also be given to the technical expertise of various other subsidiary bodies.

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[13] https://www.ospar.org/ministerial/deliverables/strategy2030

[14] Add commitments made at the HELCOM Ministerial Meeting of 2018, for the adoption of a regional action plan for underwater noise, planned on 20 October 2021 www.helcom.fi/Documents/HELCOM%20at%20work/HELCOM%20Brussels%20Ministerial%20Declaration.pdf

[15] Decision IG.22/7 Integrated Monitoring and Assessment Programme of the Mediterranean Sea and Coast and Related Assessment Criteria (UNEP(DEPI)/MED IG.22/28)

[16] Resolutions to support the implementation of measures for balancing human activities at sea and cetacean conservation: 2.16 (2004); 3.10 (2007): 4.17 (2010); 5.15 (2013); 6.17 & 6.18 (2016); 7.13 (2019).

[17] Decision XII/23 on "Marine and coastal biodiversity: Impacts on marine and coastal biodiversity of anthropogenic underwater noise and ocean acidification, priority actions to achieve Aichi Biodiversity Target 10 for coral reefs and closely associated ecosystems, and marine spatial planning and training initiatives."

[18] UNEP/CMS/Resolution 12.14 on adverse impacts of anthropogenic noise on cetaceans and other migratory species and CMS Family Guidelines on Environmental Impact Assessments for Marine Noise-generating Activities.