



**Antarctic Treaty
Consultative Meeting XXXV**

H O B A R T 2 0 1 2

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Presented by: ASOC

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Progress on the Development of a Mandatory Polar Code

Progress on the Development of a Mandatory Polar Code

Information Paper submitted by ASOC¹

Abstract

This information paper provides an update on progress towards the development of a mandatory Polar Code by the International Maritime Organization (IMO) and its relevance to Antarctic vessels. Specifically, it highlights areas where further work is required, identifies the next steps towards completion of the work and raises concerns about the possible minimal impact of a mandatory Code on Antarctic vessels. It recommends that ATPs demonstrate leadership at the IMO and ensure that the Code is applied to both new builds and existing vessels, requires polar class standards for all vessels likely to encounter ice, addresses fishing vessels and yachts as a matter of urgency and includes an Environmental Protection Chapter. ASOC submits that only when these concerns are addressed will the Code contribute to the future management of vessels and ensure that the highest safety and environmental standards are applied to vessels operating in Antarctic waters.

Background

In 2009 ATCM XXXII adopted Resolution 8 (2009) *Mandatory Shipping Code for Vessels Operating in Antarctic Waters*, which expressed the desire of the Antarctic Treaty Parties that the IMO commence work as soon as practicable to develop mandatory requirements for ships operating in Antarctic waters². During the work undertaken to amend and extend the Guidelines for ships operating in Arctic ice-covered waters³ to cover Antarctic waters by the IMO's Ship Design and Equipment (DE) sub-committee, the value of a mandatory instrument was recognised (DE 52-21 paragraph 9.6, 9.31 – 9.32). As a result, in June 2009 the IMO's Maritime Safety Committee (MSC) instructed the DE sub-committee to develop mandatory regulations for ships operating in Arctic and Antarctic waters (MSC 86/26, paragraph 23.32). The DE sub-committee subsequently commenced work on an "International Code of Safety for Ships Operating in Polar Waters" in February 2010 and established a correspondence group to work intersessionally (DE 53/26 paragraph 18.11 – 18.12). Initially a target completion date of 2012 was set (MSC 86/26 paragraph 23.32), however by DE 56 in February 2012 it had become apparent that the work could not be completed in 2012, and that more time is necessary for the Code to be concluded with the target completion year for the finalization of Step 1 (covering SOLAS passenger and cargo ships) extended to 2014 (DE 56/25 paragraph 10.33).

Recent progress

DE has met four times since commencing work on the Polar Code (DE 53 in February 2010, DE 54 in October 2010, DE 55 in March 2011, and DE 56 in February 2012) to consider the approach, structure and detail of the Code. An intersessional Correspondence Group was established in between each meeting to further develop various aspects of the Code. Some preliminary decisions were made in the early discussions including:

- the Code should be risk-based with functional requirements and prescriptive provisions (DE 53/26 paragraph 18.9),
- the Code should include both mandatory and recommendatory parts (DE 53/26 paragraph 18.9),
- separate requirements might be required for Arctic and Antarctic waters (DE 53/26 paragraph 18.9),
- the Code should be made mandatory under SOLAS, MARPOL or other instruments as appropriate (DE 53/26 paragraph 18.9 and MEPC 63/23 paragraph 11.14 – 11.18),
- the Code should address environmental aspects (DE 54/23 paragraph 13.17).

¹ Lead author Dr. Sian Prior with comments from James Barnes, Jill Barrett, Lyn Goldsworthy, Rob Nicoll, Barry Weeber and other ASOC colleagues.

² ASOC participates at the IMO through the consultative status of ASOC members.

³ MSC/Circ.1056-MEPCirc.399 Guidelines for ships operating in arctic ice-covered waters.

An early decision was also taken that the work would be conducted in two phases. In phase one SOLAS passenger and cargo vessels would be addressed, and during a second phase other non-SOLAS vessels including fishing vessels and yachts, would be considered (DE 56/25 paragraph 10.7 and 10.33).

Safety of shipping

A significant amount of work has been undertaken to elaborate the goals, functional requirements and necessary regulations focused on the safety aspects of the Code, covering the structure, stability and integrity of vessels, on-board machinery, life-saving requirements, navigation, communication, and operational requirements. The need for a ship-specific polar waters operation manual has also been considered. A number of safety aspects of shipping in polar waters do not fall within the remit of the DE sub-committee so it has been necessary to refer various chapters to other IMO Committees and sub-committees for review and further elaboration of the detail. For example, aspects relating to fire safety and protection should be reviewed and developed further by the Fire Protection sub-committee, and aspects relating to navigation in polar waters should be reviewed and developed further by the Navigation sub-committee. This work is underway currently with the aim that the relevant Committee and sub-committees will be reporting back to the next DE sub-committee meeting in March 2013.

Vessel Categories

In the course of the development of the Code, consideration has been given to developing a range of ice cover categories in which vessels of different polar class or ice strengthening would be allowed to operate. Discussion of the different categories is ongoing, and it is likely that at one end of the scale there will be a category for no ice or ice-free waters. Depending on the final definition of no ice or ice-free waters, it is possible that the definition adopted could accept that some amount of ice might be present, particularly if the definition sets a small percentage ice cover e.g. <10%, as constituting ice-free or if the definition includes waters that contain chunks of ice such as “bergy bits” or “growlers”. Such levels of ice could pose a risk to vessels, particularly if the vessels have no ice strengthening. A further issue that requires consideration is what should happen if vessels permitted to operate in no ice or ice-free conditions and only designed for such conditions unexpectedly encounters more serious ice conditions.

The conclusion of the discussion of categories is of vital importance to the further development of the Code, since defining the categories and the design of ships accepted for use in each category is likely to determine the final decisions on the provisions to be applied under each chapter of the Code.

Environmental Protection

Although the 53rd session of DE (in February 2010) agreed that the introduction of additional environmental measures to protect the sensitive polar areas was necessary and that special attention should be paid to sensitive species, underwater noise and the possibility of ship collisions with whales and other mammals (DE 53/26 paragraph 18.8), there has as yet been no detailed consideration of environmental protection provisions (DE 56/25 paragraph 10.29). This is despite a wide variety of papers⁴ submitted to MEPC 60, DE 54, DE 55, DE 56, and a Workshop on Environmental Aspects of the Polar Code organised by the IMO and funded by Norway (DE 56/INF.3).

There has been considerable discussion of when it would be appropriate to discuss environmental aspects, and a number of papers submitted by eNGOs were referred from DE 55 to the Marine Environment Protection Committee (MEPC) and the Navigation sub-committee for consideration. Regrettably, due to time constraints, the papers referred to the MEPC were not considered at the 62nd session of MEPC (DE 56/25 paragraph 10.3) nor in any detail during the 63rd session (MEPC 63/23 paragraph 11.10). MEPC 63 did consider progress on the development of the mandatory Polar Code and agreed that the mechanism for making the Code mandatory should be through the adoption of amendments to the appropriate IMO instruments such as SOLAS and MARPOL (MEPC 63/23 paragraph 11.14 – 11.18). At the latest DE meeting, a decision was taken to defer for a year further consideration of an environmental protection

⁴ MEPC 60/21/1, DE 54/13/7 and DE 55/12/5 from Norway, DE 55/12/3 from New Zealand, DE 55/12/13 from France, and DE 54/13/8, DE 54/13/9, DE 55/12/9, DE 55/12/16, DE 55/12/18, DE 55/12/19, DE 55/12/20, DE 55/12/21, DE 56/10/10, DE 56/10/11, DE 56/10/12, and DE 56/10/13 from environmental non-governmental organisations (eNGOs) with consultative status at the IMO.

chapter. As a result, the first opportunity for detailed consideration of environmental protection requirements for shipping in polar waters is now due to take place at the next DE sub-committee meeting in March 2013 (DE 56/25 paragraph 10.29). However, it is currently excluded from the work plan for the further development of the Polar Code “for the time being” (DE 56/25 paragraph 10.33), which is very worrying to ASOC and its member groups.

During the 63rd session of MEPC 63 Member States and international non-governmental organizations in consultative status were invited to submit papers on specific points or issues for consideration at the next meeting of MEPC (MEPC 63/23 paragraph 11.12, IMO Briefing, 09, March 5, 2012), which will take place from October 1-5, 2012.

Antarctic Treaty Consultative Meeting XXXIV

At ATCM XXXIV Antarctic Treaty Parties supported a call from New Zealand “to actively participate and follow the work programme of the IMO’s Mandatory Polar Code, as the development of the mandatory code was at the request of the ATCM, so it must ensure the Antarctic perspective is properly represented” and went on to note “that such action would be consistent with Resolution 5 (2010) on coordination among Antarctic Treaty Parties on Antarctic proposals under consideration at the IMO” (ATCM, 2011, Final Report, para 205).

Next steps

The current intersessional period is critical for the development of the mandatory Polar Code, and in particular to ensure that its provisions deliver the necessary requirements to ensure both safe operation of and protection of the environment from vessels operating in Antarctic waters. It has been recognised that further time is required to complete the Code and currently it is proposed that the work be completed in 2014. The DE sub-committee has developed a work plan (Annex 3 to DE 56/WP.4) setting out the steps required to complete the first phase of work by 2014 and to start the second phase of work addressing non-SOLAS vessels.

The DE’s intersessional Correspondence Group will continue to work throughout 2012 on the safety chapters that fall within its competency, including the issue of ship categories and the application of the Code to existing vessels – two issues of fundamental importance in terms of the relevance of the mandatory Code to Antarctic shipping. The outcome of the Correspondence Group’s work will be submitted towards the end of 2012 to the next DE sub-committee meeting in March 2013.

In the meantime, various IMO sub-committees will consider the safety chapters that have been forwarded and are expected to report back to DE 57 in March; and the 64th session of the MEPC will also consider further environmental protection submissions and refer the outcome of that consideration to DE 57 – a major opportunity to ensure that the needs of the Antarctic in terms of environmental protection from the potential impact of vessel activity are met.

The 57th session of DE will take place in March 2013, and the 58th session in 2014 – this is the first opportunity identified in the work plan for considering the approach to non-SOLAS vessels such as fishing vessels and yachts. ASOC and its member groups are very unhappy that fishing vessels have been left out of Phase 1 of the deliberations, and urges Antarctic Treaty Parties to co-ordinate their engagement in the IMO negotiations to ensure that they are covered expeditiously.

Implications for vessels in Antarctic waters and ASOC’s recommendations

In the past five years, one cruise ship (*M/S Explorer*), two fishing vessels (*FV In Sung No. 1*, *FV Jeong Woo 2*) and two yachts (*Berserk*, *Endless Sea*) have been lost in Antarctic waters – the loss of three of these vessels involved loss of human life. In addition, there have been a number of other incidents (see IP53, *Follow-up to Vessel Incidents in Antarctic Waters* submitted by ASOC to this meeting).

ASOC urges that the application of the mandatory Polar Code be considered with appropriate foresight, since there is a real danger that the mandatory Polar Code could be largely irrelevant for vessels operating in Antarctic waters for some years to come:

- if the Code does not include provisions for its application to existing vessels,
- if there is no requirement for vessels operating in minimal ice presence to apply appropriate standards, and
- if the work to apply the Code to fishing vessels and yachts is not addressed urgently.

ASOC submits that the application of the provisions of the mandatory Polar Code should be applied to existing vessels in so far as it is possible to do, and that there should be a presumption that the provisions will be applied to existing vessels unless a case can be established that application to existing vessels is not feasible. In addition, a system of phasing out the use of older vessels should be introduced to ensure that only vessels with the highest levels of safety and environmental protection are available for polar service. If this is not the case, it could be many years before the new Code would be applicable to vessels operating in Antarctic waters, particularly as failure to address the phasing out of availability of existing vessels means more vessels are likely to be converted for polar service.

ASOC urges that all vessels operating in waters likely to encounter ice should be a minimum of Polar Class 7 or equivalent and that there should be a category for no ice where no ice cover is anticipated. In addition, the eventuality that a vessel with no or limited ice strengthening could inadvertently enter waters with greater ice coverage or unexpected ice type should be considered along with the appropriate action to be taken.

ASOC notes that, in line with the decision reached at DE 53/26 (paragraph 18.8) that the great variety of ship sizes, types and operations in polar regions needed to be considered and in light of the frequency of incidents with associated loss of life involving fishing vessels and yachts, the development of mandatory Polar Code provisions applied to fishing vessels and yachts needs to be addressed as a matter of urgency. With this in mind, ASOC proposes that the ATCM informs the IMO that in order to ensure adequate coverage of the Polar Code to all polar waters and vessels, the IMO should be consulting with the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) responsible for the management and conservation of marine living resources of the Southern Ocean. Also, this requires the application of the Polar Code to all waters of the Southern Ocean, which share a similarly vulnerable environment and hazards to shipping as those south of 60°S.

Finally, ASOC submits that it is urgent to develop an Environmental Protection Chapter to the Polar Code, addressing in particular sewage discharges, grey water emissions, emissions of ground-up food wastes, black carbon emissions, underwater noise, antifouling systems and ballast water discharges. These aspects are fundamental to the Code's providing appropriate protection for the Antarctic's polar waters.

ASOC urges ATPs to demonstrate leadership at the IMO in order to ensure that the highest safety and environmental standards are applied to all vessels operating in the Southern Ocean, both to ensure the safety of life at sea and to ensure the fullest protection of the Antarctic ecosystems and wildlife from the impacts of vessels. To achieve this will require the concerted effort of Antarctic Treaty Parties during the deliberations in the IMO process over the coming months including the IMO Correspondence Group on the Polar Code, the work of the Ship Design & Equipment Sub-committee and the work of the Marine Environmental Protection Committee.

At ATCM XXXV, ASOC calls on Antarctic Treaty Parties to commit to ensuring that the mandatory Polar Code will appropriately enhance protection of Antarctic polar waters through:

1. engagement in the IMO Correspondence Group to:
 - a. ensure that the Code is applied to both new builds and existing vessels, and
 - b. ensure that the Code requires polar class standards for all vessels likely to encounter ice,
2. submission of papers and engaging in the DE Sub-committee to:

- a. address fishing vessels and yachts as a matter of urgency, and
- 3. submission of papers and engaging in the Marine Environment Protection Committee
 - a. to address the environmental requirements of Antarctic waters and ensure appropriate provisions are included in an Environmental Protection Chapter.

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