Polar Code Phase 2 and next steps for Southern Ocean vessel management

Submitted by ASOC
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Abstract

This paper provides an update on the progress at the International Maritime Organization (IMO) on the timetabling and development of a second phase of work on the International Code for ships operating in polar regions (Polar Code) which is expected to focus on non-SOLAS vessels (fishing vessels, pleasure craft, small cargo vessels). It leads to recommendations on the engagement of CCAMLR and CCAMLR Members in the work at the IMO and also identifies actions to be undertaken ahead of completion of the work at the IMO. The recommendations and actions will contribute to the necessary protection for the CCAMLR Convention Area.

Key Asks:

- CCAMLR Members support the development of mandatory measures to ensure the best improvement in safety of fishing vessels operating in the Southern Ocean.
- CCAMLR Members attend the upcoming Polar Code 2 discussions at IMO MSC 99 in May 2018, or provide expert advice directly to their national delegates to the meeting on the challenges and requirements of fishing vessel safety in the Southern Ocean.
- CCAMLR consider the expert advice it can provide to the IMO in support of Polar Code Phase 2 discussions and upcoming ATCM discussions in 2018 and 2019 on maritime safety issues.
- CCAMLR introduce Conservation Measures addressing the minimum ice classification standards and introducing a two-tier level of training for the Masters and crews of fishing vessel operating in CCAMLR waters.
- As a matter of urgency CCAMLR Members ratify the Cape Town Agreement 2012.
- CCAMLR review CCAMLR measures relevant to the safety of fishing vessels operating in the Southern Ocean, identify gaps and recommend updating of measures and consider new Southern Ocean fishing vessels safety measures (the "CCAMLR Standard").

1. Introduction

At CCAMLR XXXV, ASOC provided an update on the progress at the International Maritime Organization (IMO) on the development of a second phase of work on the International Code for ships operating in polar regions or “Polar Code”. Phase 2 of work is expected to focus on safety measures for fishing vessels, pleasure craft and small cargo vessels under 500GT. This paper provides further updates on progress since CCAMLR XXXV and identifies the vital next steps and actions required to ensure that the work is progressed as quickly as possible.

ASOC, working with member organisations and colleagues focused on Arctic shipping, has provided information to the IMO’s Maritime Safety Committee indicating that over 600 fishing vessels operate in polar regions. Out of 1,347 unique vessels operating in Arctic waters in 2012, 570 were fishing vessels, while in Antarctic waters, 41 fishing vessels were licensed for the December 2015 – November 2016 fishing season. The number of yachts (considered pleasure craft) sighted in the Antarctic has also increased in recent years.

In light of the vast distances involved in the case of a Search and Rescue (SAR) operation in the Antarctic, and the lack of infrastructure to support SAR and environmental response, urgent consideration of safety measures and environmental protection must be undertaken for the different

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1 Lead author Dr. Sian Prior with contributions from Chris Johnson.
2 CC-XXXV-BG-25 Progress on Southern Ocean protection and vessel activity. Submitted by ASOC.
3 Vessels not currently covered by the International Code for ships operating in polar regions or “Polar Code” include fishing vessels, pleasure craft and small cargo vessels under 500GT and are frequently referred to as “non-SOLAS” vessels i.e. vessels to which the provisions of the International Convention on the Safety of Life at Sea (SOLAS) do not apply.
5 See https://www.ccamlr.org/en/compliance/licensed-vessels
categories of non-SOLAS vessels. It is anticipated that fishing vessels and small cargo vessels will be the highest priorities, however it is recognised that it is unlikely that one approach will be suitable for all types of non-SOLAS vessels.

2. Update on developments at the International Maritime Organization (IMO)

The 98th Session of the Maritime Safety Committee (MSC) commenced with the IMO Secretary General highlighting the importance of careful consideration of the application of the Polar Code to non-SOLAS vessels during the opening of the meeting. “In particular with regard to the Polar Code which entered into force this year, I would stress the need for careful consideration of the possibility to expand an application of each provision to all ships operating in polar waters including small cargo ships, fishing vessels and pleasure yachts with a view to developing a programmatic approach for such an expanded application...”. Under the agenda item “Any Other Business”, four papers had been submitted relevant to the discussions of Phase 2 of the Polar Code (see Table 1).

ASOC supports this acknowledgement of the need to include non-SOLAS vessels, but this need not wait until the implementation of Phase 1 (SOLAS vessels) has been assessed.

Table 1: Papers submitted to the IMO’s Maritime Safety Committee 98th Session on Phase 2 of the Polar Code

<table>
<thead>
<tr>
<th>Paper Number and Title</th>
<th>Submitted by</th>
<th>Summary</th>
</tr>
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<tbody>
<tr>
<td>MSC 98/10/1 Application of the Mandatory Code to non-SOLAS ships operating in polar waters</td>
<td>New Zealand</td>
<td>MSC 98/10/1 suggested a possible approach for progression of the Mandatory Polar Code Phase II and includes a preliminary analysis of how the International Code for Ships Operating in Polar Waters can be applied to non-SOLAS ships.</td>
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<tr>
<td>MSC 98/10/2 Comments on document MSC 98/10</td>
<td>Fiji, France, New Zealand and South Africa</td>
<td>MSC 98/10/2 responded to questions the Committee had been requested to provide clear instructions on i.e. when the development of the second phase of the Polar Code should begin, its scope of application and its recommendatory or mandatory status.</td>
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<tr>
<td>MSC 98/INF 8 Multinational impact of maritime SAR incidents in Antarctic waters</td>
<td>New Zealand</td>
<td>MSC 98/INF 8 provided an explanation on why the development of the second phase of the Polar Code is relevant to a significant number of IMO Member States, who are not traditionally known to be active in the Antarctic region.</td>
</tr>
<tr>
<td>MSC 98/INF3 Potential application of the Polar Code to fishing vessels and pleasure craft</td>
<td>FOEI, WWF and Pacific Environment</td>
<td>MSC 98/INF3 provided extracts from the Legal Memo prepared for ASOC on the potential application of Polar Code to fishing vessels and yachts.</td>
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Twenty-two states took the floor and two environmental non-governmental organisations with consultative status at the IMO were present. The Committee supported urgently placing Phase 2 of work on the Polar Code onto the agenda of the Committee under a new dedicated “Safety measures for non-SOLAS vessels operating in the polar regions”. At MSC 99 (in May 2018) Members will discuss Phase 2 again with a view to taking a policy decision regarding the scope of application of the second phase of the Polar Code, its mandatory or recommendatory status, and types of vessels to be addressed. This could include a discussion about whether Phase 2 should be developed for the Antarctic in the first instance. As the issue may require more detailed discussion, a Working Group may be established at this meeting to allow for that discussion to occur. ASOC is disappointed with this outcome as this appears to reflect a lack of political will to expedite Phase 2.
In addition to the submitted papers, ASOC, along with WWF, prepared an infographic on non-SOLAS vessels in polar waters to highlight non-SOLAS vessel incidents in the polar regions and highlight the fact that in the Arctic non-SOLAS vessels made up more than 1/3 of the vessels operating there and more than 1/2 of the vessels operating in the Antarctic are non-SOLAS vessels. A series of 12 incident cards providing additional information on vessel incidents which have occurred in the polar waters or sub-polar waters from which lessons can be drawn were also available, see: http://www.asoc.org/advocacy/antarctic-environmental-protection/southern-ocean-vessel-safety/1752

ASOC Recommends:

- CCAMLR Members support the development of mandatory measures, as this will ensure the best improvement in safety of fishing vessels operating in the Southern Ocean and will ensure that safety provisions are harmonised with the provisions of Polar Code Phase 1.
- CCAMLR Members attend the upcoming Polar Code 2 discussions at IMO MSC 99 in May 2018, or provide expert advice directly to their national delegates to the meeting on the challenges and requirements of fishing vessel safety in the Southern Ocean to encourage the implementation of Phase 2 of the Polar Code.
- CCAMLR consider the expert advice it can provide to the IMO to support of Polar Code Phase 2 discussions, for example, reports of fishing vessel incidents particularly when analysis of the causes of incidents has been undertaken, mapping of ice conditions where CCAMLR fishing vessels have operated in recent seasons and predicted changes in ice coverage.

3. ATCM developments

The 2017 Antarctic Treaty Consultative Meeting included an action in relation to Phase 2 of work on the Polar Code in the multi-year strategic work plan\(^6\). The plan identifies, as a priority, action to take note of the Polar Code and to continue to strengthen cooperation among Antarctic marine operators, and envisages intersessional work with the Antarctic Treaty Secretariat (ATS) writing to the IMO to set out the ATCM’s priority interest in maritime safety and inviting the IMO to present an update and engage in ATCM XLI. The work plan anticipates that Working Group 2 will consider developments at the IMO and discuss maritime safety issues during the 2018 ATCM meeting and in 2019, there should be an exchange of views on national experiences in authorising vessel activity in the Antarctic following entry into force of the Polar Code.

ASOC Recommends:

- CCAMLR consider what expert advice it can provide to the upcoming ATCM discussions in 2018 and 2019 on maritime safety issues, so that the Antarctic Treaty Secretariat is prepared to develop a way forward if the IMO fails to make real progress on Polar Code Phase 2.

4. Full steam ahead

In CCAMLR XXXIV/BG/24\(^7\), ASOC reviewed reports involving fishing vessels in the Antarctic area and concluded that all the chapters of Part I of the Polar Code should be considered to be potentially relevant to fishing vessels, although recognising that the specific provisions of the current Code would need more detailed consideration and may not be directly transferable. After reviewing reports on incidents, ASOC identified a lack of attention to safety in the design and operation of fishing vessels in the Antarctic, as well as a need for improvement in vessel safety and operation. Ice strengthening, watertight and weathertight integrity, machinery installations, fire safety and protection, safety of navigation, communication, voyage planning, and crew training were all identified as areas in need of further consideration. ASOC also believes that as with vessels already covered by the Polar Code (cruise and cargo ships), fishing vessels should be required to gain a polar certificate and to prepare a

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\(^6\) http://www.ats.aq/documents/recatt/att624_e.pdf

\(^7\) CCAMLR XXXIV/BG/24 The International Code for Ships Operating in Polar Waters: Step 2 addressing fishing vessels.
polar water operational manual to ensure that appropriate structural and operational standards are met ahead of operations in the Southern Ocean.

**Ice strengthening**

In CCAMLR-XXXV/BG/25, ASOC repeated its proposal that as the timescale for the development of a Polar Code for fishing vessels still has to be agreed, CCAMLR should introduce priority measures in the interim to improve the safety of vessels operating in the Antarctic Area. ASOC repeated previous calls for CCAMLR Members to address ice strengthening of fishing vessels, and urged Members to adopt a Conservation Measure (CM), which would reaffirm and strengthen CCAMLR Resolution 20/XXII, and require that licenses only be issued to vessels with a minimum ice classification standard of ICE-1C or more. A CM should address the overall minimum requirement of ice class for all vessels, as well as a requirement for Members to notify the CCAMLR Secretariat of each registered fishing vessels’ ice class and for the information to be included in CCAMLR’s list of licensed vessels. It is clearly within CCAMLR’s authority to enact such as requirement.

**Training standards**

ASOC proposes that Commission Members adopt a Conservation Measure that would introduce a two-tier level of training for the Masters and crews of fishing vessel operating in CCAMLR waters. This would be similar to measures introduced in the Polar Code for Masters and crews of other vessels, and would require training be given for all personnel on vessels operating in polar waters and would strengthen standards for training of Masters and officers in charge of the navigational watch.

**Mandatory safety provisions for non-SOLAS vessels**

In order to facilitate consideration of how safety provisions for non-SOLAS vessels could be applied in a mandatory manner, ASOC commissioned legal advice on the potential application of the Polar Coode to fishing vessels and yachts. The resulting legal memo concludes that amending the SOLAS Convention to add a separate chapter or subchapter would be a possible method to apply relevant safety provisions of the Polar Code to fishing vessels and yachts, or alternatively the 2012 Cape Town Agreement could be amended to apply the desired safety provisions of the Polar Code to fishing vessels only. Pleasure craft and small cargo vessels lie outside the jurisdiction of SOLAS and the Agreement. This is however problematic because the agreement is yet to come into effect and has only been ratified by a small number of IMO Members including two CCAMLR Members – Norway and South Africa.

ASOC Recommends:

- CCAMLR introduce CMs addressing the minimum ice classification standards and introducing a two-tier level of training for the Masters and crews of fishing vessel operating in CCAMLR waters.
- As a matter of urgency CCAMLR Members ratify the 2012 Cape Town Agreement.
- CCAMLR reviews CCAMLR measures relevant to the safety of fishing vessels operating in the Southern Ocean, identifies gaps and recommends updating of measures and considers new Southern Ocean fishing vessel safety measures (the “CCAMLR Standard”).

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8 CCAMLR XXXIII/BG/22 Proposals on improving the governance and control of fishing vessels operating in the Southern Ocean.
9 CCAMLR XXXIII/BG/22 Proposals on improving the governance and control of fishing vessels operating in the Southern Ocean.