

Agenda Item 4.2(c) - MSA Recommendation I(B) by USA

**PAME II-2015 Agenda Item xxx**  
**AMSA Recommendation I(B)**  
**AOR Final Report Recommendation 7**  
**Fishing Vessel Safety and the Prevention of Pollution from Such Ships in the Arctic**

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**Background**

Arctic Marine Shipping Assessment (AMSA) Report Recommendation I(B) provides in relevant part:

*That the Arctic states, in recognition of the unique environmental and navigational conditions in the Arctic, decide to cooperatively support efforts at the International Maritime Organization to strengthen, harmonize and regularly update international standards for vessels operating in the Arctic.*

Arctic Ocean Review (AOR) Final Report Recommendation 7 provides that:

*Arctic states could consider approaches, including at IMO, to address safety and environmental concerns with respect to other types of vessels that, due to their size, routes, and nature of activity, may not be subject to the Polar Code.*

PAME I-2015 adopted a record of decision (ROD) requesting member governments to submit information to PAME II-2015 on their domestic regulations pertaining to fishing vessel safety and the prevention of pollution from such ships in the Arctic.

**U.S. Response**

Current U.S. domestic laws pertaining to fishing vessel safety and the prevention of pollution from such ships in the Arctic are presented below.

**I. FISHING VESSEL SAFETY**

At the national level, the United States regulates commercial fishing vessel safety under the Commercial Fishing Industry Vessel Safety Act (CFIVSA) of 1988<sup>1</sup> as amended by the Coast Guard Authorization Act of 2010<sup>2</sup> and the Coast Guard and Maritime Transportation Act of 2012.<sup>3</sup> The CFIVSA authorizes the U.S. Coast Guard to prescribe regulations for commercial fishing vessels related to, among other things, navigation equipment, radio communication, first aid, fire prevention, flotation devices, distress signaling devices, ventilation and water pumping systems, ground tackle, and safety equipment maintenance and signage.<sup>4</sup> The CFIVSA, and the safety regulations promulgated by the U.S. Coast Guard to implement it,

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<sup>1</sup> Pub.L. 100-424, Sept. 9, 1988, 102 Stat. 1585.

<sup>2</sup> Pub.L. 111-281, Oct. 15, 2010, 124 Stat. 2905.

<sup>3</sup> Pub.L. 112-213, Dec. 20, 2012, 126 Stat. 1540.

<sup>4</sup> 46 U.S.C.A. § 4502.

apply to all commercial fishing vessels subject to U.S. jurisdiction,<sup>5</sup> but the specific requirements are based on variables that include, but are not limited to, the size of the vessel, the number of people embarked, and where the vessel operates.<sup>6</sup> Violations of the CFIVSA, as amended, or its implementing regulations can result in civil and criminal penalties.<sup>7</sup>

Commercial fishing vessels that operate within three nautical miles from the baseline from which the breadth of U.S. territorial sea is measured, have more than sixteen individuals onboard, or are engaged in the Aleutian trade<sup>8</sup> are further subject to mandatory Dockside Safety Examinations (starting on October 15, 2015) to ensure compliance with CFIVSA regulations.<sup>9</sup> Under the examination program, all such vessels must be examined by the U.S. Coast Guard at least once every five years and carry a certificate of compliance.<sup>10</sup>

In addition to the U.S. Coast Guard safety regulations requiring specific equipment, individuals in charge of commercial fishing vessels that operate within three nautical miles from the baseline from which the breadth of the U.S. territorial sea is measured, have more than sixteen individuals onboard, or are engaged in the Aleutian trade must complete a training program that includes, among other topics, seamanship, stability, collision prevention, navigation, fire fighting and prevention, damage control, personal survival, emergency medical care, emergency drills, and weather, and hold a valid certificate issued under that program.<sup>11</sup> Furthermore, individuals who are issued a certificate are required to complete refresher training at least once every five years as a condition of maintaining the validity of the certificate. These individuals must also contact the nearest U.S. Coast Guard Sector Command when an incident occurs such as an injury requiring professional medical treatment beyond first aid that renders an individual unfit to perform duties, or an accident that affects the vessel's seaworthiness.<sup>12</sup>

## II. PREVENTION OF POLLUTION FROM FISHING VESSELS

### A. The Act to Prevent Pollution From Ships

In the United States, the Act to Prevent Pollution from Ships (APPS)<sup>13</sup> implements the 1973 International Convention for the Prevention of Pollution from Ships<sup>14</sup> and the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships<sup>15</sup> (referred to collectively as "MARPOL 73/78"). APPS applies "to a ship of United States

<sup>5</sup> *Id.* § 4501; 46 C.F.R. § 24.05-1.

<sup>6</sup> *See, e.g.*, 46 C.F.R. 28.115 (regulating throwable flotation devices as follows: ships less than 16ft, no requirement; 16-26ft, 1 throwable cushion or 1 orange 24-inch ring life buoy with 60 feet of line; 26-65ft, 1 orange 24-inch ring life buoy feet with 60 feet of line; 65ft or more, 3 orange 24-inch ring life buoys, at least one device must have 90 feet of line.

<sup>7</sup> *Id.* § 4507.

<sup>8</sup> "Aleutian trade" is defined as "the transportation of cargo (including fishery related products) for hire on board a fish tender vessel to or from a place in Alaska west of 153 degrees west longitude and east of 172 degrees east longitude, if that place receives weekly common carrier service by water, to or from a place in the United States (except a place in Alaska)" for chapters 33, 45, 51, 81, and 87. 46 U.S.C.A. § 2102. The regulations here are promulgated under chapter 46, but no additional definition of "Aleutian trade" is provided.

<sup>9</sup> 46 U.S.C.A. § 4502(f).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* (g).

<sup>12</sup> 46 C.F.R. § 4.05-1.

<sup>13</sup> 33 U.S.C. §§ 1901-15.

<sup>14</sup> Oct. 2, 1973, 34 U.S.T. 3407, 1340 U.N.T.S. 184.

<sup>15</sup> Feb. 17, 1978, 1340 U.N.T.S. 61.

registry or nationality, or one operated under the authority of the United States, wherever located.” Nothing in APPS excludes fishing vessels regardless of size. However, certain provisions in MARPOL are based on gross tonnage.<sup>16</sup> APPS authorizes the U.S. Coast Guard to “prescribe any necessary or desired regulations to carry out the provisions of the MARPOL Protocol.”<sup>17</sup> Violations of the MARPOL Protocol or regulations issued by the U.S. Coast Guard under APPS may result in a civil penalty or referral to the Department of Justice for criminal prosecution.<sup>18</sup>

Oil. MARPOL Annex I applies to U.S. vessels wherever located and to foreign flag vessels while they are within the navigable waters of the United States. MARPOL Annex I requires oil filtering equipment and prohibits the discharge of oily waste into the sea unless the vessel is proceeding en route and the oily waste is processed through the oil filtering equipment with an oil content of less than 15 parts per million (ppm). Fishing vessels over 400 gross tons are required to maintain an Oil Record Book and log any failures of the oil filtering equipment as well as all discharges and disposals of oily waste.<sup>19</sup>

Garbage. MARPOL Annex V regulates the discharge of garbage<sup>20</sup> from U.S. vessels and foreign flag vessels while they are within the United States’ navigable waters or Exclusive Economic Zone (EEZ). Under APPS and its implementing regulations, commercial fishing vessels must have a written garbage management plan that describes how garbage will be collected, stored, and disposed of, and designates an individual responsible for carrying out the plan.<sup>21</sup> Additionally, vessels must keep a record of all garbage disposal, including the method used, the amount, and the time.<sup>22</sup> U.S. Coast Guard regulations also limit what types of garbage can be disposed of at sea<sup>23</sup> and completely bans the discharge of plastics at sea or into the navigable waters of the United States (including synthetic rope and fishing nets).<sup>24</sup>

Sewage. The discharge of sewage from commercial fishing vessels is not regulated under APPS as the U.S. is not a party to MARPOL Annex IV. Under the Clean Water Act, however, the U.S. Environmental Protection Agency (U.S. EPA) generally requires that vessels within the navigable waters of the United States be equipped with an operable Marine Sanitation Device (MSD) (see below for details).

## B. The Clean Water Act

The Clean Water Act (CWA)<sup>25</sup> prohibits “the discharge of any pollutant by any person” except in compliance with the Act.<sup>26</sup> The CWA defines “discharge of a pollutant” as “any

<sup>16</sup> 33 U.S.C. §§ 1902(b).

<sup>17</sup> *Id.* § 1903(c)(1).

<sup>18</sup> *Id.* § 1908(a) and (b).

<sup>19</sup> 33 C.F.R. § 151.25

<sup>20</sup> Defined as “all kinds of victual, domestic, and operational waste, excluding fresh fish and parts thereof, generated during the normal operation of the ship and liable to be disposed of continuously or periodically, except dishwater, graywater, and those substances that are defined or listed in other annexes to MARPOL 73/78. 33 C.F.R. § 158.120

<sup>21</sup> 46 C.F.R. § 25.50–1; 33 C.F.R. § 151.57.

<sup>22</sup> *Id.* at 33 C.F.R. § 151.55.

<sup>23</sup> *Id.* at §§ 151.69–73.

<sup>24</sup> *Id.* at § 151.67.

<sup>25</sup> 33 U.S.C. §§ 1251–1387.

addition of any pollutant to navigable waters from any point source” and “any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel.”<sup>27</sup> Thus, vessels (including commercial fishing vessels) are only regulated in “navigable waters,” defined by the CWA as “the waters of the United States, including the territorial seas.”<sup>28</sup> For purposes of the CWA, the “territorial sea” is defined as “the belt of the seas . . . extending seaward a distance of three miles.”<sup>29</sup>

Vessel discharges are governed under the CWA through the National Pollution Discharge Elimination System, which is administered by either the U.S. Environmental Protection Agency or an individual U.S. state to which U.S. EPA has delegated the requisite authority.<sup>30</sup> The CWA requires U.S. EPA to create guidelines for this permitting system that are unique to the ocean (including the territorial sea).<sup>31</sup> U.S. EPA regulates vessels in the territorial sea by creating a Vessel General Permit covering the discharges incidental to the normal operation of commercial vessels 79 feet or greater for those vessels that apply for coverage (compared to a regime where each vessel would need to apply for and obtain an individual permit).<sup>32</sup> However, commercial fishing vessels are exempt from this requirement until December 18, 2017, meaning U.S. EPA does not currently require commercial fishing vessels to obtain permit coverage before discharging wastes that are generated during normal operation.<sup>33</sup>

Ballast water from a commercial fishing vessel 79 feet or greater is, however, regulated by the Vessel General Permit, meaning commercial fishing vessels must apply for coverage to discharge ballast water.<sup>34</sup> To be covered by the Vessel General Permit, commercial fishing vessels 79 feet or greater must limit the volume of ballast water discharged and take other management steps such as cleaning the ballast tank regularly.<sup>35</sup> In addition, ballast water is managed by the U.S. Coast Guard under the National Invasive Species Act.<sup>36</sup> Regulations issued by the U.S. Coast Guard under the National Invasive Species Act primarily deal with technologies to treat ballast water.<sup>37</sup>

The CWA has separate provisions dedicated to the management of sewage from vessels.<sup>38</sup> Under these provisions, vessels that operate within the navigable waters of the U.S. (defined under the CWA as those waters extending 3 miles from shore) which are equipped with installed toilets are required to use a Marine Sanitation Device, a piece of equipment designed to receive, retain, treat, or discharge sewage.<sup>39</sup> U.S. EPA has set standards for these devices<sup>40</sup> while the U.S. Coast Guard regulates their design, construction, certification, installation and operation.<sup>41</sup>

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<sup>26</sup> *Id.* § 1311(a).

<sup>27</sup> *Id.* § 1362(12).

<sup>28</sup> *Id.* § (7).

<sup>29</sup> *Id.* § (8).

<sup>30</sup> *Id.* § 1342.

<sup>31</sup> *Id.* § 1343.

<sup>32</sup> Pub.L. 111-215, July 30, 2010, 124 Stat 2347.

<sup>33</sup> The initial deadline in Pub.L. 111-215 was extended to December 18, 2017, under Pub.L. 113-281, Dec. 18, 2014, 128 Stat 3022.

<sup>34</sup> *Id.*

<sup>35</sup> 2.2.3.5 of EPA’s 2013 Vessel General Permit.

<sup>36</sup> Pub.L. 104-332, October 26, 1996, 110 Stat 4073.

<sup>37</sup> *See* 33 C.F.R. § 151.

<sup>38</sup> 33 U.S.C. § 1322.

<sup>39</sup> *Id.* at (h)(4), (a)(5).

<sup>40</sup> 40 C.F.R. 140 et seq.

<sup>41</sup> 33 C.F.R. 159, Subparts A-D.

Notwithstanding the regime described above, the CWA universally prohibits “[t]he discharge of oil or hazardous substances . . . into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) . . . which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States.”<sup>42</sup> This prohibition extends only to oil and hazardous substances defined by U.S. EPA and only in quantities determined to be harmful by EPA.<sup>43</sup>

The CWA authorizes a range of enforcement options, including civil and criminal penalties for violations of the Act and its implementing regulations.<sup>44</sup>

## **Conclusion and Recommendations**

At the national level, the U.S. generally has broad authority to regulate commercial fishing vessel safety and the prevention of pollution from such ships. The U.S. Coast Guard and the U.S. EPA have exercised this authority to regulate commercial fishing vessel safety and the prevention of pollution from such ships, including within Arctic waters subject to U.S. jurisdiction.

The U.S. recommends that PAME member governments:

- Take note of the information provided in this paper;
- Consider inviting member governments to submit information for the most recent three-year period on incidents involving commercial fishing vessels in Arctic waters subject to their flag and coastal state jurisdiction where such incidents resulted in a reportable marine casualty or the discharge of a pollutant; and
- Consider undertaking a new project (with the aid of an expert consultant if appropriate) that would generate a report summarizing Arctic States’ regulations of commercial fishing safety and the prevention of pollution from such vessels as well as the incidents referenced in the previous paragraph. When completed this report could be furnished to the IMO as an aid to its Member States in their deliberations on Phase II of the Polar Code.

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<sup>42</sup> 33 U.S.C. § 1321 (b)(3).

<sup>43</sup> See 40 C.F.R. §§ 110.3, 117. “Harmful” is defined as a quantity that produces a sheen.

<sup>44</sup> *Id.* § 1319.