IMPLEMENTATION OF IMO INSTRUMENTS

Outcomes of HTW 2 and III 2 on
Guidelines for port State control officers on the ISM Code

Note by the Secretariat

SUMMARY

Executive summary: This document provides the outcomes of the Sub-Committee on Human Element, Training and Watchkeeping (HTW), at its second session, and the Sub-Committee on Implementation of IMO Instruments (III), at its second session, in relation to the draft MSC-MEPC.4 circular on Guidelines for port State control officers on the ISM Code.

Strategic direction: 5.3

High-level action: 5.3.1

Output: 5.3.1.1

Action to be taken: Paragraph 16

Related documents: III 1/18, annex 4; HTW 2/19, paragraph 8.21, HTW 2/WP.5; III 2/16, annex 5; MSC 96/25, paragraph 9.9 and MEPC 69/21, paragraph 13.5

Introduction

1. MSC 96 concurred with the decision of MEPC 69 to defer the consideration of the draft MSC-MEPC.4 circular on Guidelines for port State control officers on the ISM Code, pending consideration of the outcome of HTW 2 along with the aforementioned draft circular, to MEPC 70 and MSC 97. In this context, the Committee instructed the Secretariat to provide the outcome of HTW 2 to MSC 97 with a view to approval of the aforementioned circular (MSC 96/25, paragraph 9.9).

Outcome of HTW 2

2. The Sub-Committee (HTW 2) noted that MSC 94, having been advised that MEPC 67 agreed that the draft Guidelines for port State control officers on the ISM Code, as prepared by...
III 1 (III 1/18, annex 4), should be referred to the HTW Sub-Committee for comments, taking into account the views expressed by IACS on further definitions needed, prior to their approval, agreed that the draft Guidelines should be referred to HTW 2 for consideration under its agenda item on the "Role of the human element", prior to their approval by MEPC 68 and MSC 95.

3 The IACS observer, proposing amendments to the draft Guidelines, stated that the draft text could be improved to avoid those instances when, in the past, deficiencies had been raised by port State control officers (PSCOs) on the basis that a systemic failure had been established, without proper justification or an investigation having been undertaken to identify exactly what had failed and how; and:

.1 proposed the insertion, in section 5, of appropriate definitions to distinguish between the terms "failures" and "serious failures";

.2 urged the Sub-Committee to consider the inclusion of a new paragraph 6.3.2 on the application of professional judgement by port State control officers to assess if there is evidence that deficiencies are already being dealt with adequately by the Company, i.e.: "In applying professional judgement, the PSCO should assess if there is evidence that deficiencies are already being dealt with adequately by the Company, including the personnel working on board, so that such deficiencies do not indicate a failure of the implementation of the ISM Code"; and

.3 urged the recognition of sections 9 and 10.2 of the ISM Code, which anticipate that non-conformities, accidents and hazardous situations are reported to, and addressed by, the Company.

4 In the ensuing discussion during HTW 2, the following views were expressed:

.1 the aforementioned IACS proposals should be given detailed consideration and included in the draft guidelines;

.2 the guidelines needed to provide a clear distinction between "failures" and "serious failures";

.3 restricting the judgement of PSCOs to assess implementation of the ISM Code was unhelpful and could undermine the ISM system; and

.4 it was not appropriate for PSCOs to be conducting ISM Code-type audits during PSC inspections and determine if companies had carried out corrective action.

5 The Sub-Committee referred the draft Guidelines for port State control officers on the ISM Code (document III 1/18, annex 4) to the Working Group on Human Element Issues for consideration, taking into account the views expressed, in particular those by IACS, and to provide comments, as appropriate.

6 After consideration of the group's report (HTW 2/WP.5), HTW 2 endorsed the draft MSC-MEPC.4 circular on Guidelines for port State control officers on the ISM Code (HTW 2/WP.5, annex 1), for review and finalization by III 2, with the following amendments made to the draft Guidelines (Note: Only amended text of the draft Guidelines is reproduced here as shaded text):
1.3 The port State control officer (PSCO) conducts an inspection of the ship, which is a sampling process and gives a snapshot of the vessel on a particular day. The documentation of the Safety Management System (SMS) is required to be in the working language of the ship, which the PSCO may not be able to understand. Therefore, the PSCO cannot perform a safety management audit and is not a member of a RO.

6.3.1 If a more detailed inspection for technical or operational related deficiencies is carried out, this should be done in accordance with the Procedures for port State control. Any technical and/or operational-related deficiencies found during this inspection should be, individually or collectively considered by the PSCO, using their professional judgement, to indicate that either:

.1 these do not show a failure, or lack of effectiveness, of the implementation of the ISM Code; or

.2 there is a failure, or lack of effectiveness, of the implementation of the ISM Code; or

.3 there is a serious failure that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment, or lack of effectiveness, of the implementation of the ISM Code.

7.1.2 If there are technical or operational related deficiencies reported which:

.1 individually or collectively lead to detention of the ship and indicate a serious failure that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment, or lack of effectiveness, of the implementation of the ISM Code; Report an ISM-related deficiency in the PSC inspection report with the requirement that a safety management audit has to be carried by the Administration or the RO before the ship may be released from her detention.

7.3.1 The following are deficiencies which may warrant detention:

.1 deficiencies of technical and/or operational nature which individually or collectively provide objective evidence of a serious failure that poses a serious threat to the safety of personnel or the ship or a serious risk to the environment, or lack of effectiveness, of the implementation of the ISM Code;

8.2.1 Where the PSCO has considered the technical and/or operational-related deficiencies found and concluded these provide objective evidence of a serious failure, or lack of effectiveness of the implementation of the ISM Code, an ISM-related deficiency should be reported in the PSC inspection report.”

1 In applying professional judgement, the PSCO should check for evidence that deficiencies are already being dealt with adequately by the Company, including the personnel working on board. The existence of such evidence regarding the identified deficiencies may indicate that there is no failure of the implementation of the ISM Code.
Having considered the report of HTW 2, MEPC 68 and MSC 95 agreed to forward the above-mentioned draft MSC-MEPC.4 circular on Guidelines for port State control officers on the ISM Code to III 2 for review and finalization, with a view to approval by the Committees.

Outcome of III 2

The III Sub-Committee reviewed the outcome of HTW 2 and noted that the changes to the draft Guidelines, proposed by HTW 2, were providing a more detailed description of "serious failures" by referencing criteria used for substandard ships and inserting a footnote as guidance for PSCOs when applying their professional judgement for checking deficiencies.

In the ensuing discussion some delegations expressed their view on the need to clarify the use of the words "serious failure" and to provide a common understanding of the factors constituting ISM Code-related failures and serious failures, the latter being the threshold for detaining a ship, in aligning such criteria with those being used for non-ISM Code-related deficiencies for identifying substandard ships. In this regard, references to factors posing a serious threat to the safety of personnel or the ship or a serious risk to the environment contained in the proposed changes by HTW 2 to paragraphs 6.3.1.3, 7.1.2.3 and 7.3.1.1 of the draft Guidelines were in line with factors that would make a ship unseaworthy, which would be consistent with paragraph 3.1.2 of the annex to resolution 1052(27) on Procedures for port State control, 2011, concerning identification of a substandard ship.

Additionally, the footnote proposed to be added under paragraph 6.3.1 of the draft Guidelines was supported by some delegations as a decision support-tool for PSCOs, reminding them about sections 9 and 10 of the ISM Code on the company's responsibility to establish procedures to deal with deficiencies, so that evidence thereof might indicate that there is no failure of the safety management system.

Other delegations were of the view that the Guidelines prepared by III 1 had already been tested satisfactorily by some PSC regimes and that the scope of the proposed changes had gone beyond pure human element-based considerations.

In this context, the use of alternative terminologies, other than "serious failure", was recognized as introducing potential limitation to the scope of PSC inspections, whereas instead, the professional judgement of PSCOs should not be restricted, so that responsibility for ISM Code-related deficiencies would not only be that of the captain of a ship, and the company and the shipowner would also be held accountable.

III 2, having also endorsed the view that ISM Code-related deficiencies should be addressed differently from deficiencies not related to the ISM Code, instructed the Working Group on Measures to Harmonize Port State Control Activities and Procedures Worldwide to finalize the draft guidelines for PSCOs on the ISM Code using the original version of the draft Guidelines, as set out as a draft MSC-MEPC.4 circular in annex 4 of document III 1/18.

The Sub-Committee, having considered the report of the working group (III 2/WP.5), agreed to the draft MSC-MEPC.4 circular on Guidelines for port State control officers on the ISM Code, as set out in annex 5 of document III 2/16, for approval by MSC 96 and MEPC 69.

In summary, III 2 did not include any of the proposed changes, prepared by HTW 2 (see paragraph 6 above), and retained the initial text of the draft guidelines (III 1/18, annex 4), except for the following modified paragraph 1.3, as prepared by the working group at III 2:
"1.3 Port State control officers (PSCOs) do not perform safety management audits. PSCO conduct inspections of ship, which are a sampling process and give a snapshot of the vessel on a particular day."

Action requested of the Committee

16 The Committee is invited to note the information provided and to take action as appropriate.