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CG-CVC Policy Letter
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From: K. P. McAVOY, CAPT
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To: Distribution

Subj: GUIDANCE IMPLEMENTING THE INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS

Ref:
(a) Coast Guard Authorization Act of 2010 (P.L. 111-281, October 15, 2010)
(b) Resolution MEPC.195(61), Guidelines for Survey and Certification of Anti-Fouling Systems on Ships
(c) Resolution MEPC.105(49), Guidelines for Inspection of Anti-Fouling Systems on Ships

1. PURPOSE. To provide guidance to ensure vessel compliance with the provisions of the International Convention on the Control of Harmful Anti-fouling Systems on Ships (AFS Convention).

2. ACTION. Sector Commanders/Officers-in-Charge, Marine Inspection (OCMIs) shall direct their staffs to use the guidance in this policy letter to ensure all applicable U.S. and foreign flagged vessels comply with the AFS Convention.

3. DIRECTIVES AFFECTED. None.

4. BACKGROUND. The AFS Convention was adopted by the IMO to prohibit the use of harmful organotins in anti-fouling paints used on ships and to establish a mechanism to prevent the potential future use of other harmful substances in anti-fouling systems. Starting on November 21, 2012, U.S. flagged vessels, wherever located, and foreign flagged vessels in the internal waters of the United States, in any port, shipyard, offshore terminal, or other place in the United States, lightering in the territorial sea of the United States, or anchoring in the territorial sea of the United States, must comply with the applicable portions of the AFS Convention as outlined below. The type of anti-fouling systems controlled (prohibited) are specified in Annex 1 of the Convention. The Coast Guard implements the AFS Convention through reference (a), (33 U.S.C. §§ 3801 – 3857). Compliance verification for U.S. and foreign vessels shall follow the process and scope as described in the applicable portions of this policy letter.

5. DISCUSSION. The International Anti-fouling Systems (IAFS) Certificate and attached Record of Anti-fouling Systems (ROAFS), document compliance with the AFS Convention. U.S. flagged vessels 400 gross tons and above, as measured under the International Convention on Tonnage Measurement of Ships, 1969 (ITC), engaging on international voyages (excluding fixed or floating platforms, floating storage units, and floating production storage and off-loading units), must

demonstrate compliance with the AFS Convention through possession of an IAFS Certificate (33 U.S.C. § 3821). Those U.S. vessels not in compliance with the AFS Convention may be subject to foreign port state control actions when engaged on international voyages. Therefore, Sector Commanders/OCMIs should encourage proactive compliance with this policy letter to avoid detention of U.S. vessels in foreign ports. All vessels 24 meters or more in length, but less than 400 gross tons engaged in international voyages, except those specifically excluded by reference (a), shall carry a Declaration signed by the owner or owner's authorized agent (33 U.S.C. § 3822). This Declaration shall be accompanied by appropriate documentation (such as a paint receipt or a contractor invoice) or contain an appropriate endorsement. This Declaration may also take the form of a Statement of Voluntary Compliance (SOVC). The format of a Declaration and a template form can be found in Appendix 2 to Annex 4 of the AFS Convention.

6. PROCEDURES.

a. Domestic Vessel Inspections and Certifications: For applicable U.S. vessels, the Coast Guard or Recognized Classification Society (RCS), will verify compliance with the provisions of the AFS Convention and issue IAFS Certificates and attached ROAFS during routine scheduled inspections. As noted in paragraph 5 above, vessels over 400 ITC engaged in a least one international voyage must carry an IAFS certificate (33 U.S.C. § 3821). All inspected vessels to which the AFS Convention is applicable, but that do not require an IAFS Certificate due to size or tonnage, will receive an endorsement on their Certificate of Inspection (COI). The endorsement will read as follows: "*This vessel's anti-fouling system has been verified to meet the requirements of the International Convention on the Control of Harmful Anti-Fouling Systems*". Verification of anti-fouling systems will normally be conducted during inspection for certification, annual re-inspection, dry-docking, or an annual survey conducted by the RCS. The Coast Guard or RCS may conduct AFS Convention compliance surveys and issue IAFS Certificates upon request at anytime if an international voyage is anticipated and the certificate is required prior to that voyage. The Coast Guard or RCS will conduct the following compliance exams for the issuance and endorsement of IAFS Certificates:

i. Initial Survey: Under the AFS Convention, Annex 4, Regulation 1, an initial survey must be carried out for a new construction vessel or for an existing vessel before the IAFS Certificate is issued for the first time. The OCMI or RCS will verify that the vessel's anti-fouling system fully complies with the requirements of the AFS Convention. After successfully completing the examination, the Coast Guard or RCS will issue the IAFS Certificate. The IAFS certificate ceases to be valid when the AFS is changed or replaced.

ii. Changes to the AFS: A survey must be carried out whenever an anti-fouling system is changed or replaced. Such surveys should cover the same scope as an Initial Survey and a new AFS certificate shall be issued. In accordance with reference (b), a vessel undergoing a major conversion which affects the anti-fouling system may be required to undergo an initial survey as determined by the OCMI or RCS. Repairs affecting approximately twenty-five (25) percent or more of the anti-fouling system should be considered as a change or replacement of the anti-fouling system.

iii. Procedures for Conducting Surveys: Article 10 of the AFS Convention requires vessels to be surveyed and certified in accordance with the regulations contained in Annex 4 of the AFS Convention. The types of anti-fouling systems controlled (prohibited) are specified in the table located in Annex 1 of the AFS Convention. The OCMI or RCS should use the procedures adopted by the Marine Environmental Protection Committee as outlined in reference (c) to conduct the required surveys. Only upon successful completion of the survey/examination will the IAFS Certificate be issued.

iv. Noncompliance with AFS Convention Requirements: Operation of a vessel on international voyages without an IAFS Certificate may subject the vessel to detention by foreign port state officials. If the OCMI or RCS cannot determine if a vessel's anti-fouling system is in compliance with the AFS Convention, the OCMI or RCS shall withhold issuance of the IAFS Certificate until compliance is proven and restrict the vessel's route to domestic voyages only. Other enforcement actions by the Coast Guard may include Letters of Warning, Notice of Violations, or civil penalty actions as determined by the OCMI.

v. Obtaining an IAFS Certificate from the Coast Guard or RCS: Vessel owners and operators of U.S. flagged vessels should contact their cognizant OCMI or RCS for an inspection/survey and issuance of an IAFS Certificate and ROAFS. The IAFS Certificate and ROAFS issued by the Coast Guard are available under USCG Form numbers CG-6059 and CG-6059A, respectfully. Only RCSs that have been delegated the authority to issue IAFS Certificates on behalf of the Coast Guard in accordance with 46 CFR 8.320 may issue IAFS Certificates to U.S. flagged vessels (76 FR 76896, (December 9, 2011)). Prior to U.S. ratification of the AFS Convention, RCSs may have issued SOVCs to those vessels meeting AFS Convention requirements. Vessel owners and operators who currently possess a valid SOVC should now contact their RCS for issuance of an IAFS Certificate. Vessel owners and operators may request the Coast Guard issue an IAFS Certificate based on a SOVC provided there is sufficient proof that the anti-fouling system has not been changed or replaced since the SOVC was issued.

vi. Marine Information for Safety and Law Enforcement (MISLE): When the AFS inspection is conducted as part of a COI, annual, dry-dock, or other inspection activity, a notation shall be made within the activity's narrative. If the AFS inspection is conducted as a standalone inspection, it should be documented as an "Administrative Inspection" with the inspection details documented in the narrative. Once issued, a copy of the IAFS Certificate shall be scanned and attached into the vessel's list of documents.

b. Port State Control (PSC) Procedures: The Coast Guard shall examine vessels for compliance with the AFS Convention during regularly scheduled PSC examinations[1] and shall be guided by the provisions of references (b), and (c), as implemented or modified by this policy letter.

i. Basic Examination, Convention Vessels: Port State Control Officers (PSCO) should examine the IAFS Certificate or Declaration on Anti-fouling System, and the attached ROAFS, if appropriate. PSCOs should not take AFS samples during PSC examinations.

[1] There will be no special examinations aimed at enforcing the AFS Convention on foreign vessels. However, the COTP should investigate credible reports of non-compliance.

(1) The IAFS Certificate should be in conformity with Appendix 1 to Annex 4 of the AFS Convention and indicate whether an anti-fouling system controlled under Annex I of the AFS Convention has or has not been applied, removed, or been covered with a sealer coat, and whether an anti-fouling system controlled under Annex I of the AFS Convention was applied on the vessel prior to or after the date specified in AFS Convention.

(2) The IAFS Certificate should be properly completed and endorsed by the Administration or RCS.

(3) The ROAFS should be up to date and include attached records from dry-dockings related to AFS or sealer coat applications. Further, information on the ROAFS should agree with that shown on the IAFS Certificate.

ii. Basic Examination, Non-Convention Vessels: The PSCO should ascertain whether the vessel is in compliance with the AFS Convention and may accept a SOVC, or an equivalent certification, issued by the flag Administration or a Recognized Organization on its behalf. This documentation should contain all of the information required in an IAFS Certificate and the associated ROAFS. Otherwise, the basic examination for these vessels is similar in scope to AFS Convention vessels. For status of the conventions, and which Administrations have not ratified the AFS Convention, see: http://www.imo.org/About/Conventions/StatusOfConventions

iii. Expanded examination: During any examination, the examination team should expand the examination if "clear grounds" are established that the vessel is not in compliance with the AFS Convention. The following, among other things, constitute clear grounds for conducting an expanded examination into AFS Convention compliance:

(1) There is no evidence of compliance with the AFS Convention (e.g., missing IAFS Certificates or SOVCs).

(2) The IAFS Certificate or SOVC contains irregularities (for example, the painting or coating dates on the certificate do not agree with vessel dry-docking dates, there are numerous paint patches on the visible portion of the underwater hull, or the IAFS Certificate is not properly completed).

(3) Credible reports have been found or made of the vessel's non-compliance with the AFS Convention.

(4) Evidence that actual hull coatings are not consistent with those described on the IAFS Certificate, ROAFS, Declaration, or SOVC.

iv. Violations: If a vessel is in violation of the AFS Convention, the COTP may warn, detain, or exclude the vessel from port (33 U.S.C. § 3855). Notification to the appropriate flag administration shall be made in accordance with current PSC guidance whenever the vessel is detained.

(1) Any deficiency indicating non-compliance with the AFS Convention may result in an examination deficiency, which shall be documented on the Form B and in MISLE. Correction of such deficiencies may be deferred until the return of the vessel after sailing foreign or to its next regularly scheduled drydocking if correction of the deficiency will occur at that event.

(2) The COTP may issue a Letter of Warning to a vessel that has AFS Convention deficiencies.

(3) In cases where the deficiencies related to the anti-fouling system are more substantive, the COTP should detain the vessel under the AFS Convention. Such cases would include, for example, instances where the vessel has a controlled anti-fouling system installed and it is not properly sealed, the IAFS Certificate is invalid or missing, or the vessel's master admits non-compliance with the AFS Convention. In the most egregious cases, for example, the vessel has been previously detained by the U.S. for non-compliance with the AFS Convention and has not corrected the non-compliance, the COTP may also pursue a civil penalty. When a detention under the AFS Convention is appropriate, the COTP should allow the vessel to complete its planned in-port operations. If the vessel cannot correct the AFS related deficiency during the vessel's planned port call, the COTP may release the vessel from detention after documenting the detention.

7. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is not intended to nor does it impose legally-binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other federal and state regulators, in applying statutory and regulatory requirements. You can use an alternative approach for complying with these requirements if the approach satisfies the requirements of the applicable statutes and regulations.

8. QUESTIONS. Questions or concerns regarding this policy related to domestic vessels may be directed to Commandant (CG- CVC-1) at CG-CVC-1@uscg.mil or (202) 372-1224. Questions or concerns regarding this policy related to foreign vessels may be directed to Commandant (CG- CVC-2) at (202) 372-1230.

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