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DEVELOPMENT OF A LEGALLY BINDING FRAMEWORK FOR THE CONTROL AND MANAGEMENT OF SHIPS' BIOFOULING TO MINIMIZE THE TRANSFER OF INVASIVE AQUATIC SPECIES

Comments on the potential form of the legally binding framework on ships' biofouling management

Submitted by ICS

SUMMARY

Executive summary:	This document provides comments on documents PPR 13/5 (Republic of Korea et al.) and PPR 13/5/1 (Japan and Norway) relating to the potential form of a legally binding framework on ship's biofouling management.
Strategic direction, if applicable:	7
Output:	7.16
Action to be taken:	Paragraph 7
Related documents:	PPR 13/5, PPR 13/5/1 and PPR 13/5/17

Introduction

1 This document is submitted in accordance with paragraph 6.12.5 of the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* (MSC-MEPC.1/Circ.5/Rev.6) and provides comments on document PPR 13/5 (Republic of Korea et al.) and PPR 13/5/1 (Japan and Norway) relating to the potential form of a legally binding framework on ships' biofouling management.

Discussion

2 The Committee, at its eighty-third session, agreed to include in its post-biennial agenda an output on the development of a legally binding framework to minimize the transfer of invasive aquatic species via ships' biofouling. ICS welcomes this decision, as the development of a mandatory IMO biofouling instrument will provide a global framework and help address the growing patchwork of regional and national biofouling measures currently emerging.

3 ICS notes the range of options discussed for the legal form of the future biofouling instrument, including a stand-alone biofouling instrument, amendments to the Ballast Water Management Convention (BWMC), MARPOL Annex VI and the Anti-Fouling Systems (AFS) Convention. While the BWMC focuses on biosecurity pathways and may appear conceptually aligned, ICS agrees with the assessment in document PPR 13/5 that integrating ballast water and biofouling management into a single binding instrument would introduce unnecessary complexity. In ICS' view, the operational approaches and management techniques for ballast water and biofouling differ fundamentally, and combining them risks confusion in implementation and compliance.

4 Similarly, ICS notes proposals in document PPR 13/5/1 to consider combining the mandatory biofouling instrument with MARPOL Annex VI. Although hull condition and energy efficiency are operationally linked, MARPOL is designed to regulate discharges of harmful substances and not the prevention of invasive aquatic species transfer. In ICS' view, biofouling management involves inspection, maintenance and in-water cleaning processes that fall outside the pollution-prevention scope of MARPOL.

5 ICS also observes that the AFS Convention, while related to coating systems, cannot serve as a sufficient legal framework for biofouling management and control. The AFS Convention regulates specific anti-fouling substances and their effects, whereas biofouling management encompasses a broader and more dynamic set of operational, maintenance and inspection actions that extend beyond anti-fouling coating and system performance. In ICS' view, expanding the AFS Convention to cover biofouling management would create structural and legal inconsistencies and, as a result, ICS does not support this option to combine the AFS Convention with the biofouling instrument.

6 In light of the above, and consistent with the evaluations in documents PPR 13/5 and PPR 13/5/11 (China), ICS considers that a stand-alone legally binding biofouling instrument offers the clearest, most coherent and most practicable approach. A stand-alone biofouling convention would avoid ambiguity, ensure that scope and responsibilities are clearly defined, and allow for the structured development of goals, functional requirements and specific provisions of the biofouling instrument which is further elaborated under document PPR 13/5/17 (ICS). As a result, ICS firmly believes that developing a stand-alone biofouling instrument provides the strongest foundation for global harmonization, regulatory clarity and effective implementation of the legally binding framework on ships' biofouling management by shipowners, flag States and port States.

Action requested by the Sub-Committee

7 The Sub-Committee is invited to consider the discussion in paragraphs 2 to 6 and take action as appropriate.