



## TSB Recommendation M08-04

### Design and construction of fishing vessels operating in ice

The Transportation Safety Board of Canada recommends that the Department of Transport include in the proposed Fishing Vessel Safety Regulations adequate measures to ensure that all fishing vessels operating in ice—including those participating in the seal hunt—are structurally suited for their operating environment.

Marine transportation safety investigation report	<a href="#">M08M0010</a>
Date the recommendation was issued	26 November 2008
Date of the latest response	December 2022
Date of the latest assessment	March 2023
<a href="#">Rating</a> of the latest response	Satisfactory in Part
<a href="#">File status</a>	Active

#### Summary of the occurrence

On the morning of 29 March 2008, the small fishing vessel *L'Acadien II*, with six crew members on board, capsized 18 nautical miles off Cape Breton Island, Nova Scotia, while being towed in ice by the light icebreaker CCGS *Sir William Alexander*. Two crew members were quickly rescued by another small fishing vessel. Several hours later, three deceased crew members were recovered from the overturned vessel by Department of National Defence search-and-rescue technicians. One crew member is still missing and presumed dead.

The Board issued the safety recommendation on 26 November 2008.

#### Rationale for the recommendation

In 2005, there were approximately 1800 vessels participating in the seal hunt, all of them under 19.81 m. Based on licensing information from 2007, a similar number of vessels are estimated to have participated during the 2008 season. Typically, these vessels are neither designed nor constructed for operating in ice. Intended for open-water fishing and outfitted temporarily for participation in the hunt, their hulls, shafts, propellers, and rudders are seldom strengthened

for navigation in ice-infested waters. In addition, without sufficient power and mass to navigate in ice, these vessels are susceptible to being beset and damaged.

The Board is encouraged that Transport Canada is undertaking public consultations as it drafts the new Fishing Vessel Safety Regulations and the Construction Standards for Commercial Fishing Vessels. New fishing vessels over nine metres in length that operate in ice will be required to be suitably designed and constructed. However, the Board is concerned that this will not include all existing vessels; in 2005, for example, 58 per cent of vessels involved in the seal hunt were less than 10.7 m.

Given that these existing vessels are likely to make up the majority of the sealing industry, the current risk level will persist.

Therefore, the Board recommended that

the Department of Transport include in the proposed Fishing Vessel Safety Regulations adequate measures to ensure that all fishing vessels operating in ice—including those participating in the seal hunt—are structurally suited for their operating environment.

**TSB Recommendation M08-04**

## Previous responses and assessments

### February 2009: response from Transport Canada

In its 24 February 2009 letter, the Minister of Transport, Infrastructure, and Communities agreed with the general intent of the recommendation.

The response noted that the responsibility for safe construction and operation of a vessel is incumbent upon the designer and/or builder and ultimately on the owner and/or master of the vessel. Operating in ice-covered waters requires prudence, and going astern in heavy ice is a specialized operation.

The response indicated that Transport Canada is developing new Fishing Vessel Safety Regulations that will include revised provisions for fishing vessels that may navigate in ice-covered waters. The provisions related to vessel structure will apply to new and modified vessels. They will also apply, based on risk, and where reasonable and practicable, to existing vessels. These provisions, which are expected to be published in the *Canada Gazette*, Part I, by spring 2010, will apply to vessels that are over 9m in length.

In a follow-up meeting, Transport Canada (TC) advised that new Fishing Vessel Safety Regulations that will now include provisions that apply to vessels less than 9 m that may navigate in ice-covered waters. A public consultation information paper on the draft Fishing Vessel Safety Regulations, which apply to fishing vessels less than 24 m, and a consultation document on the *Construction Standards for Small Vessels*, TP 1332, were made available at the national meeting of the Canadian Marine Advisory Council held in April 2009. The information paper stated that a fishing vessel shall not embark on any voyage into ice-covered waters unless

the hull of the vessel has been designed or adequately strengthened to resist damage from anticipated conditions. Existing vessels shall meet the design and construction requirements set out in TP 1332, as is reasonable and practical to do so. The consultation document on TP 1332 stated that the hull of vessels shall be strengthened if the vessel is intended for operation in waters where the presence of ice requires the vessel to make extraordinary manoeuvres in order to avoid hull damage.

**June 2009: TSB assessment of the response (Satisfactory Intent)**

The new proposed Fishing Vessel Safety Regulations will include provisions relating to the structure of fishing vessels less than 24 m in length that navigate in ice-covered waters. However, existing fishing vessels, many of which are less than 15 gross tonnage and would have not been previously inspected, are only required to comply where it is reasonable and practical to do so. TC has indicated that the “reasonable and practical” provisions may be applied following a risk-based assessment on a case-by-case basis. However, if the owner of the vessel can demonstrate that the costs of the modifications are such that it is unreasonable and impracticable to modify the vessel, the Minister may take measures such as placing operating restrictions on the vessel. While new vessels will benefit from the provisions of the proposed regulations, the risk associated with existing vessels may be substantially reduced if hazards are properly identified, risks are adequately assessed and corrective actions, such as modification and hull strengthening, are made to these vessels.

Therefore the response to the recommendation is **Satisfactory Intent**.

**March 2010: response from Transport Canada**

TC’s update, dated March 2010, indicated that TC is developing new Fishing Vessel Safety Regulations that include revised provisions for fishing vessels that may navigate in ice-covered waters. The provisions related to vessel structure will apply to new and/or modified vessels as reasonable and practicable based on risk. These provisions apply to vessels that are over 9 m in length.

The proposed new Fishing Vessel Safety Regulations are anticipated to be pre-published in the *Canada Gazette*, Part I, in the fourth quarter of 2011.

**March 2010: TSB assessment of the response (Satisfactory Intent)**

If the action proposed by TC is implemented fully and “reasonable and practical” provisions are applied following a risk-based assessment on a case-by-case basis, the risk associated with existing vessels may be substantially reduced.

Therefore, the assessment of the response remains **Satisfactory Intent**.

**December 2010: response from Transport Canada**

TC’s update, dated December 2010 indicated that they are developing new Fishing Vessel Safety Regulations that include revised provisions for fishing vessels that may navigate in ice-covered

waters. The provisions related to vessel structure will apply to new and/or modified vessels and to existing vessels as reasonable and practicable based on risk. These provisions apply to vessels that are over 9 m in length. The proposed new Fishing Vessel Safety Regulations are anticipated to be pre-published in the *Canada Gazette*, Part I, in the second quarter of 2012.

#### **March 2011: TSB assessment of the response (Satisfactory Intent)**

Where it is not practical to make modifications, existing vessels may be grandfathered from these requirements. Furthermore, a total of 6195 registered fishing vessels less than 9 m in length are exempt. However, if the action proposed by TC is implemented fully and “reasonable and practical” provisions are applied following a risk-based assessment on a case-by-case basis, the risk associated with existing vessels may be substantially reduced.

Therefore, the assessment of the response remains **Satisfactory Intent**.

#### **December 2011: response from Transport Canada**

TC’s proposed Fishing Vessel Safety Regulations include revised provisions for fishing vessels that may navigate in ice-covered waters. The provisions are related to vessel structure and will apply to new and/or modified vessels and to existing vessels as reasonable and practicable based on risk. These provisions apply only to vessels that are over 9 metres in length.

These regulations will also cover certain requirements for operating environments.

The proposed new Fishing Vessel Safety Regulations are anticipated to be published in the *Canada Gazette*, Part II, in the 2nd Quarter of 2013.

The TC response was part of a government action plan introduced following the *L’Acadien II* accident which included safe operational measures to be taken by vessel owners and by DFO-CCG policy which was introduced last year.

#### **March 2012: TSB assessment of the response (Satisfactory in Part)**

Where it is not practical to make modifications, existing vessels can be grandfathered from these requirements. Additionally, more than 6000 registered fishing vessels will be exempt from the proposed Fishing Vessel Safety Regulations as they are less than 9 m.

However, vessels less than 9 m are required to comply with the *Small Vessel Regulations* and the *Construction Standards for Small Vessels*, TP 1332 that state that “the hull of a vessel (other than a pleasure craft) operating in ice covered waters, where the presence of ice requires that the vessel make extraordinary manoeuvres to avoid hull damage, shall be strengthened.” This requires operator analysis that can only be conducted retroactively, once the vessel has already operated in ice. The proposed *Fishing Vessel Regulations* will incorporate TP 1332 by reference.

Therefore, the risks associated with fishing vessel operation in ice covered waters will be reduced but will not be substantially reduced through the implementation of the proposed *Fishing Vessel Regulations*. TC’s proposed actions will allow for some fishing vessels with un-

strengthened hulls to continue operating in ice, particularly those fishing vessels that are active during the seal hunt.

The assessment of the response is considered **Satisfactory in Part**.

#### **December 2012: response from Transport Canada**

In consideration of the clarifications and information provided below, Transport Canada believes that the status should be restored to Satisfactory Intent pending completion of the new regulations.

Transport Canada is developing proposed new Fishing Vessel Safety Regulations that include revised provisions for fishing vessels that may navigate in ice-covered waters. The provisions related to vessel structure will apply to new and/or modified vessels and to existing vessels. These provisions apply to all fishing vessels.

Fishing vessels less than 9 m are not exempt: they are required to comply with the *Small Vessel Regulations* that require vessels (other than a pleasure craft) to be strengthened if the vessel is intended for operation in waters where the presence of ice requires the vessel to make extraordinary manoeuvres in order to avoid hull damage. In both regulations, existing vessels are not grandfathered. Critical safety elements such as structural strength must meet or demonstrate an equivalent level of safety.

The proposed new Fishing Vessel Safety Regulations are anticipated to be pre-published in the *Canada Gazette*, Part I, in the 1st quarter of 2014.

The vessel design and construction structural strength requirement is contingent upon the intended use, taking into account the maximum anticipated loads. Operation of a vessel in conditions where loads are higher than anticipated or exceed maximums due to misuse or unexpected external factors such as exceptional environmental conditions, inadequate operational support or other factors is the responsibility of the authorized representative and the master of the vessel.

The *Canada Shipping Act, 2001*, section 106, makes the authorized representative of the vessel responsible for developing procedures for the safe operation of the vessel and in section 109 the master of the vessel responsible for taking all reasonable steps to ensure the safety of the vessel and of persons who are on board or are loading or unloading it while using equipment on it.

The issue at the origin of this recommendation should not only be addressed by structural requirements but also through proper vessel operation in ice-covered waters. The TC response was part of a government action plan introduced following the accident that included safe operational measures to be taken by owners and DFO-CCG policy regarding the provision of icebreaking support. Vessel towing policy and management of the seal fishery therefore should be assessed in unison with the recommendations and measures taken by DFO-CCG. The *2011-2015 Integrated Fisheries Management Plan for Atlantic Seals* indicates a downward trend and

drastic reduction in sealing activity since the time of the report and the previous referenced report.

In 2010, approximately 390 people participated in the Atlantic Canada Seal harvest. This number is down significantly from 2009 which reported 1,755 active participants. Similarly, the number of active vessels in 2010 dropped to 106, from 540 active vessels the previous year.

### March 2013: TSB assessment of the response (Satisfactory Intent)

TSB recognizes that the risk associated with operating small fishing vessels in ice is reduced as the number of operational vessels is reduced. The TSB also recognizes the following actions meant to respond to the recommendation:

- TC is developing proposed new Fishing Vessel Safety Regulations that include revised provisions for fishing vessels that may navigate in ice-covered waters.
- Vessels not covered by Fishing Vessel Safety Regulations are governed by the Small Vessel Regulations.
- Both new and existing vessels must abide by the construction provisions governing fishing vessels that may navigate in ice-covered waters.
- No fishing vessels are or will be grandfathered in either regulation.
- Authorized representatives (owners and operators) are delegated responsibility for recognizing the risks of navigating in ice-covered waters and for operating with due diligence.

Therefore, the assessment of the response has been restored to **Satisfactory Intent**.

### November 2013: response from Transport Canada

In November 2013, Transport Canada indicated that they are developing proposed new Fishing Vessel Safety Regulations.

Phase 1 of the proposed Regulations include revised provisions for fishing vessels that may navigate in ice-covered waters. The provisions related to vessel structure will apply to new and/or modified vessels and to existing vessels. These provisions apply to all fishing vessels.

Fishing Vessels less than 9 m are not exempt, they are required to comply with the *Small Vessel Regulations* that require vessels (other than a pleasure craft) to be strengthened if the vessel is intended for operation in waters where the presence of ice requires the vessel to make extraordinary maneuvers in order to avoid hull damage. In both regulations, existing vessels are not grandfathered. Critical safety elements such as structural strength must meet or demonstrate an equivalent level of safety.

Phase 1 of the proposed new *Fishing Vessel Safety Regulations* are anticipated to be pre-published in the *Canada Gazette*, Part I, in the 2nd quarter of 2014. Completion of Phase 1 should achieve the close out of this recommendation.

Vessel design and construction structural strength requirement is contingent upon the intended use, taking into account the maximum anticipated loads.

Operation of a vessel in conditions where loads are higher than anticipated or exceed maximums due to misuse or unexpected external factors such as exceptional environmental conditions, inadequate operational support or other factors is the responsibility of the Authorized Representative and the Master of the vessel.

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The issue at the origin of this recommendation should not only be addressed by structural requirements but also through proper vessel operation in ice covered waters. The TC response was part of a government action plan introduced following the accident which included safe operational measures to be taken by owners and DFO-CCG policy regarding the provision of icebreaking support, vessel towing policy and management of the seal fishery therefore should be assessed in unison with the recommendations and measures taken by DFO-CCG. The 2011-2015 Integrated Fisheries Management Plan for Atlantic Seals indicates a downward trend and drastic reduction in sealing activity since the time of the report and the previous referenced report[:] “In 2010, approximately 390 people participated in the Atlantic Canada Seal harvest. This number is down significantly from 2009 which reported 1,755 active participants. Similarly, the number of active vessels in 2010 dropped to 106, from 540 active vessels the previous year.”

#### March 2014: TSB assessment of the response (Satisfactory Intent)

It has been over 5 years since the TSB issued this recommendation. TC’s response provided no new substantive information or rationale for the protracted delay in promulgating these new regulations.

Given that the proposed new Fishing Vessel Safety Regulations are now anticipated to be pre-published in the *Canada Gazette*, Part I, in the 2nd quarter of 2014, the assessment of the response remains **Satisfactory Intent**.

#### December 2014: response from Transport Canada

Transport Canada’s response reiterated the information provided in its response of November 2013 that related to responsibilities of the Authorized Representative and owner of the vessel pursuant to the *Canada Shipping Act, 2001*, and the taking into consideration the various operational measures such as icebreaking, towing, and management of the seal fishery. The response also indicated:

Transport Canada is developing the proposed *Fishing Vessel Safety Regulations*. Phase 1 of the proposed regulations include revised provisions for fishing vessels that may navigate in ice-covered waters. The provisions related to vessel structure will apply to new and/or modified vessels and to existing vessels. These provisions apply to all fishing vessels.

Fishing vessels less than 9 m are not exempt, as part of Phase 2 of the proposed new *Fishing Vessel Safety Regulations*, they will be required to comply with the

*Small Vessel Regulations* that require vessels (other than a pleasure craft) to be strengthened if the vessel is intended for operation in waters where the presence of ice requires the vessel to make extraordinary maneuvers in order to avoid hull damage. In both regulations, existing vessels are not grandfathered. Critical safety elements such as structural strength must meet or demonstrate an equivalent level of safety.

Phase 1 of the proposed new *Fishing Vessel Safety Regulations* are anticipated to be pre-published in the *Canada Gazette*, Part I, in the 1<sup>st</sup> quarter of 2015. Completion of phase 1 should achieve the close out of this recommendation.

Phase 2, which will be developed after the completion of Phase 1, will involve repealing what is left of the *Small Fishing Vessel Inspection Regulations* and replacing them with what is currently Parts 2, 3, 4 of the proposed *Fishing Vessel Safety Regulations*. Phase 2 will bring the proposed construction requirements into force.

Vessel design and construction structural strength requirement is contingent upon the intended use, taking into account the maximum anticipated loads. Operation of a vessel in conditions where loads are higher than anticipated or exceed maximums due to misuse or unexpected external factors such as exceptional environmental conditions, inadequate operational support or other factors is the responsibility of the Authorized Representative and the Master of the vessel.

#### March 2015: TSB assessment of the response (Unsatisfactory)

TC's 2014 response provided little new substantive information. Given that both new and existing vessels must abide by the construction provisions governing fishing vessels that may navigate in ice-covered waters, the risks associated with operating in ice will not be substantially reduced until the new *Fishing Vessel Safety Regulations* come into force.

In 2009, TC indicated that these regulations would be pre-published in the *Canada Gazette*, Part I, in the spring of 2010. While the proposed measures are reasonable, the protracted delay is not reasonable.

The continued lack of progress in implementing the proposed measures now warrants changing the assessment rating to **Unsatisfactory**.

#### February 2016: response from Transport Canada

Proposed amendments to regulations governing fishing vessels are expected to address TSB's concerns once all phases are implemented, as there will be requirements to address the operation of fishing vessels in ice-covered waters. Phase 1 will be published in the *Canada Gazette*, Part I, as soon as possible. As soon as a definitive date of publication is confirmed, TC will advise TSB.

TSB was subsequently informed that the Regulations Amending the Small Fishing Vessel Inspection Regulations were pre-published in the *Canada Gazette*, Part I, on 06 February 2016.

**March 2016: TSB assessment of the response (Unsatisfactory)**

Phase 1 of the regulations amending the *Small Fishing Vessel Inspection Regulations* was published in the *Canada Gazette*, Part I, on 06 February 2016. Phase 1 updates the current safety equipment, vessel stability requirements and introduces requirements for safe operating procedures for small fishing vessels. It is anticipated that Phase 2 will update the current construction requirements for small fishing vessels. TC has not indicated when Phase 2 of the amended regulations will be pre-published in the *Canada Gazette*. Until such time as the current construction standards are amended to ensure that fishing vessels are structurally suited for operating in ice, the risk associated with operating in ice environments will not be substantially reduced.

Given the prolonged delay in amending the regulations governing fishing vessels, the reassessment of this recommendation therefore remains **Unsatisfactory**.

**December 2016: response from Transport Canada**

Phase 1 of the regulations amending the *Small Fishing Vessel Inspection Regulations* were published in the *Canada Gazette*, Part II, on July 13, 2016 and will come into force one year after the publication date.

Phase 2 of the amendments to the regulations governing fishing vessels are expected to address TSB's concerns regarding the operation of fishing vessels in ice-covered waters. Phase 2 will update the current construction requirements of the *Small Fishing Vessel Inspection Regulations*.

**March 2017: TSB assessment of the response (Unsatisfactory)**

The TSB acknowledges the recent drafting of Phase 2 of the new Small Fishing Vessel Inspection Regulations. The Board agrees that the new regulations, if implemented as currently drafted, should address the safety deficiency identified in the recommendation to ensure that small fishing vessels operating in ice are structurally suited for their operating environment.

However, due to the protracted delay in putting into force Phase 2 of the regulations governing fishing vessels, the reassessment of this recommendation remains **Unsatisfactory**.

**December 2017: response from Transport Canada**

TC consulted with industry at the December 2017 National CMAC on the proposed construction requirements for Phase 2 of new Fishing Vessel Safety Regulations. Work is ongoing.

**February 2018: TSB assessment of the response (Unsatisfactory)**

The Board is pleased to see that TC has undertaken an industry consultation. However, TC has not provided a detailed plan and any timeline for completing the final drafting of Phase 2 of the new Fishing Vessel Safety Regulations. It is also unclear if TC plans to make any substantive

changes to the original draft as a result of the industry consultation. Therefore, the reassessment of this recommendation remains **Unsatisfactory**.

#### January 2019: response from Transport Canada

Transport Canada agrees in principle with the recommendation. TC continued the consultation with stakeholders at the November 2018 National Canadian Marine Advisory Council (CMAC) meeting on the proposed construction requirements for Phase 2 of new *Fishing Vessel Safety Regulations* (FVSR). Work is ongoing to develop the regulatory requirements for construction and is targeted for pre-publication in the *Canada Gazette*, Part I, in June 2020.

Phase I of the FSVR (that entered into force in July 2017) already requires that the authorized representative ensure the vessel is designed, constructed and equipped to operate safely and be seaworthy in its area of operation. TC will issue specific guidance to its inspectors via FlagState.net in early 2019 to verify that the intent of this provision is met for fishing vessels operating in ice conditions.

TC therefore, suggests that this recommendation should be considered Satisfactory Intent.

#### February 2019: TSB assessment of the response (Satisfactory Intent)

The Board takes note that TC is developing the regulatory requirements for construction requirements for Phase 2 of the new *Fishing Vessel Safety Regulations* (FVSR) which are expected to be published in the *Canada Gazette*, Part I, in June 2020.

The Board also notes that TC will be providing specific guidance to its inspectors in 2019 to ensure that all fishing vessels operating in ice are structurally suited. However, the Board remains concerned about the protracted delay in Phase 2 of the new FVSR coming into force.

The Board considers the response to the recommendation to show **Satisfactory Intent**.

#### January 2020: response from Transport Canada

Transport Canada (TC) agrees with the recommendation. TC continued the consultation with stakeholders at the November 2019 national Canadian Marine Advisory Council (CMAC) meeting on the proposed construction requirements for Phase 2 of new *Fishing Vessel Safety Regulations* (FVSR). An information paper containing all the proposed construction requirements was presented and stakeholder comments were collected through a correspondence group in the weeks following CMAC. The proposed requirements include a performance based requirement for existing and new vessels operating in ice-covered waters. Following consideration of the comments in early 2020, the proposed regulatory requirements for construction are targeted for pre-publication in the *Canada Gazette*, Part I, in 2020.

The planned issuance of a FlagStateNet to provide guidance to inspectors on the application of the new requirements in the FVSR Phase I (specifically, that the authorized representative ensures the vessel is designed, constructed and equipped to operate safely and be seaworthy in

its area of operation, in the context of vessel operating in ice-covered water) was postponed to allow for the complete proposal on construction requirements to be presented at the 2019 Fall CMAC. The FlagStateNet will now be issued in Winter 2020.

### **March 2020: TSB assessment of the response (Satisfactory Intent)**

The Board notes that TC has consulted stakeholders regarding the proposed construction requirements for phase 2 of the new *Fishing Vessel Safety Regulations* (FVSR). TC plans to consider the comments received in early 2020 before pre-publication of phase 2 of the FVSR in the *Canada Gazette*, Part I, in 2020. The proposed requirements include a performance-based requirement for existing and new vessels operating in ice-covered waters. The Board is encouraged by the proposed performance-based requirement for existing and new vessels operating in ice-covered waters but, without more detail, it is unknown whether this requirement will be sufficient to mitigate the safety deficiency identified in this recommendation.

The Board also notes that, although TC had indicated it would give internal guidance to inspectors providing specific guidance to ensure that all fishing vessels operating in ice are structurally suited, it has not yet been issued. Finally, the Board remains concerned about the protracted delay in phase 2 of the new FVSR coming into force.

The Board considers the response to the recommendation to show **Satisfactory Intent**.

### **February 2021: response from Transport Canada**

Transport Canada agrees with this recommendation. At the fall 2019 Canadian Marine Advisory Council (CMAC) session, Transport Canada presented the proposal for Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) and stakeholders have since provided comments to Transport Canada on the proposal's construction requirements. Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) includes performance-based requirements for existing and new vessels operating in ice-covered waters. Due to the spring 2020 Canadian Marine Advisory Council session being canceled as a result of the COVID-19 pandemic, Transport Canada continued consultations with industry on the revised construction requirements at the national fall 2020 Canadian Marine Advisory Council meeting. The department is continuing its consultations with stakeholders until February 2021 which will be discussed at the spring 2021 Canadian Marine Advisory Council session.

The proposed regulatory amendments are targeted for pre-publication in the *Canada Gazette*, Part I, in early 2022. Once published, these amendments are expected to address the safety deficiency in this recommendation.

In response to the Transportation Safety Board's comment that internal guidance had not be shared with inspectors, Transport Canada is re-evaluating if the dissemination of this guidance is still needed. Should it be deemed necessary, Transport Canada will share the guidance with stakeholders, taking into consideration the comments received for phase II of the regulations.

### March 2021: TSB assessment of the response (Satisfactory Intent)

The Board notes that Transport Canada (TC) will continue engaging with stakeholders on Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) which will include performance-based construction requirements for existing and new vessels operating in ice-covered waters. The publication of proposed amendments to the FVSR in the *Canada Gazette*, Part I, are now anticipated in early 2022.

TC's response in January 2019 indicated they would be providing specific guidance for inspectors via FlagState.net to verify that the intent of this provision is met. However, TC now indicates that they are re-evaluating the need to distribute this guidance and, if deemed necessary, they will share it with stakeholders while taking into consideration the comments received for Phase 2 of the regulations. Upon the request for further clarification on 04 March 2021, TC specified that this re-evaluation was due to the lower level of activity in the sealing industry, and the ongoing regulatory development work being undertaken on the *Fishing Vessel Safety Regulations*.

The Board is unclear why ongoing regulatory development work is causing a delay in providing guidance to inspectors on the application of the Phase 1 requirements to ensure that vessels are designed, constructed and equipped to operate safely and be seaworthy while operating in ice-covered water. The Board remains concerned about the ongoing delays in responding to this recommendation as the publication of the Phase 2 amendments to the FVSR is repeatedly postponed.

Therefore, the Board considers the response to the recommendation to show **Satisfactory Intent**.

### December 2021: response from Transport Canada

Transport Canada agrees with this recommendation. At the fall 2019 Canadian Marine Advisory Council (CMAC) session Transport Canada presented the proposal for Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) and stakeholders have since provided comments to Transport Canada on the proposal's construction requirements. Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) includes performance-based requirements for existing and new vessels operating in ice-covered waters. Due to the spring 2020 Canadian Marine Advisory Council session being canceled as a result of the COVID-19 pandemic, Transport Canada continued consultations with industry on the revised construction requirements at the national fall 2020 and spring 2021 Canadian Marine Advisory Council meeting. The department concluded its consultations with stakeholders at the fall 2021 Canadian Marine Advisory Council session.

The proposed regulatory amendments are targeted for pre-publication in the *Canada Gazette*, Part I, in late 2022/early 2023. Once published, these amendments are expected to address the safety deficiency in this recommendation.

In response to the Transportation Safety Board's comment that internal guidance had not be shared with inspectors, Transport Canada is re-evaluating if the dissemination of this guidance

is still needed. Should it be deemed necessary, Transport Canada will share the guidance with stakeholders, taking into consideration the comments received for phase II of the regulations.

### **March 2022: TSB assessment of the response (Satisfactory in Part)**

The Board notes that Transport Canada will pre-publish Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) in late 2022/early 2023, which will include performance-based construction requirements for existing and new vessels operating in ice-covered waters. Once published, the Board will review the regulatory proposal and evaluate whether the safety deficiency has been mitigated.

It is still unclear why ongoing regulatory development work is causing a delay in providing guidance to inspectors on the application of the Phase 1 requirements to ensure that vessels are designed, constructed, and equipped to operate safely and be seaworthy while operating in ice-covered water. The Board remains concerned about the ongoing delays in responding to this recommendation as the publication of the amendments to the FVSR have been repeatedly postponed.

Therefore, the Board considers the response to Recommendation M08-04 to be **Satisfactory in Part**.

### **Latest response and assessment**

#### **December 2022: response from Transport Canada**

Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR) is anticipated to be pre-published in Fall 2023, [and] will address requirements for new and existing fishing vessels operating in ice.<sup>1</sup>

Transport Canada provides guidance to inspectors on the application of the Phase 1 requirements to ensure that vessels are designed, constructed, and equipped to operate safely and be seaworthy while operating in ice-covered water; Small vessel compliance program (SVCP) – Guidance notes for the detailed compliance report for small fishing vessels not more than 15 gross tonnage (2018) – TP 15356E<sup>2</sup> (See Question 7 and 46 and related link to *Ice Navigation in Canadian Waters*<sup>3</sup>). Furthermore, the document, *Ice Navigation in Canadian Waters*, published by the Canadian Coast Guard in collaboration with Transport Canada, Environment and Climate Change Canada and Fisheries and Oceans Canada, provides Masters

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<sup>1</sup> Responses are those of the stakeholders to the TSB in written communications and are reproduced in full. The TSB corrects typographical errors in the material it reproduces without indication but uses brackets [ ] to show other changes or to show that part of the response was omitted because it was not pertinent.

<sup>2</sup> Transport Canada, <https://tc.canada.ca/en/marine-transportation/marine-safety/small-vessel-compliance-program-svcp-guidance-notes-detailed-compliance-report-small-fishing-vessels-not-more-15-gross-tonnage-2018-tp-15356e> (last accessed on 03 February 2023).

<sup>3</sup> Fisheries and Oceans Canada and Canadian Coast Guard, *Ice Navigation in Canadian Waters*, 6th edition (February 2022), at <https://waves-vagues.dfo-mpo.gc.ca/library-bibliotheque/347665.pdf> (last accessed on 03 February 2023).

and watchkeeping crew of vessels transiting Canadian ice-covered waters with the necessary understanding of the regulations, shipping support services, hazards and navigation techniques in ice.

In response to a request by the TSB for further information, TC sent the following information on 02 February 2023: As noted in our original response Detailed Compliance Report (DCR) and associated guidance document contain guidance questions and references directly related to Phase 1 *Fishing Vessel Safety Regulations* concerning operating in ice-covered water. The guidance document compliments the Detailed Compliance Report completed by vessel owners enrolling in the SVCP Program and provides detailed guidance, or the “how”, on complying with regulatory requirements. During a monitoring inspection, the MSI is required to use the DCR as a checklist and have the guidance document available for reference. The guidance document addresses ice specifically, thus providing MSIs what they must look for during a monitoring inspection for those vessels operating in ice-covered waters. Specifically:

### Question 7

A fishing vessel should not operate in ice unless:

- Its hull has been designed or adequately strengthened to resist damage from anticipated conditions;
- Its machinery and steering equipment has been protected against damage and the effects of slush ice choking; and
- It is capable of navigating safely through the waters.

For more information on requirements for operating in ice, see:

- Canadian Coast Guard publication *Ice Navigation in Canadian Waters*<sup>4</sup> (provides MSIs and fishing masters additional guidance on navigating icy conditions.
- Classification societies' guidance

*Ice Navigation in Canadian Waters* provides information about all aspect of navigation in ice, although the specific measures identified in the documents are often addressed to larger vessels, the identified risks can also be present for small vessels operations. While small fishing vessels are not routinely classed, small fishing vessel designers may refer to Classification society design standards related to ice strengthening for guidance on appropriate ice strengthening requirements to apply on small fishing vessels. In addition, to support mandatory inspections for small fishing vessels between 15GT to 150GT (up to 24.4 meters) Transport Canada is currently in the early stages of drafting a small fishing vessel safety checklist and related guidance for MSIs and Fishing Masters (similar to what is provided in SVCP-F) which will include the construction requirements from the proposed *Fishing Vessel Safety Regulations* Phase I and II (when published).

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<sup>4</sup> Ibid.

**March 2023: TSB assessment of the response (Satisfactory in Part)**

Transport Canada's (TC) response notes that Phase 2 of the *Fishing Vessel Safety Regulations* (FVSR), which will address new and existing fishing vessels operating in ice, has been delayed from late 2022/early 2023 to fall 2023. Its response also highlights 2 publications that have been disseminated to aid stakeholders to understand applicable regulations. The *Small vessel compliance program (SVCP) – Guidance notes for the detailed compliance report for small fishing vessels not more than 15 gross tonnage (2018)* – TP 15356E explains ice-related requirements to small fishing vessel owners and the document *Ice Navigation in Canadian Waters*, which was published by a collaboration of government departments, provides Masters and watchkeeping crews with the necessary information to operate in Canadian ice-covered waters.

The Board is encouraged to see that TC has provided guidance to its inspectors and now requires that Marine Safety Inspectors verify that vessels are designed, constructed and equipped to operate safely in ice-covered water when they are conducting a monitoring inspection. However, the Board is concerned that this verification is limited to the small number of vessels that undergo a monitoring inspection in a given year, thus leaving the majority of fishing vessels unverified.

While the Board appreciates the efforts by TC to aid stakeholders to understand applicable regulations regarding operating in ice, it remains concerned about the ongoing delays in the publication of the FVSR, which are expected to address the underlying safety deficiency.

Therefore, the Board considers the response to Recommendation M08-04 to be **Satisfactory in Part**.

**File status**

The TSB will continue to monitor action taken by Transport Canada. Further delays in publishing these regulations may warrant a change in rating.

This deficiency file is **Active**.