

**AMENDMENTS TO MARPOL ANNEX I FOR THE PREVENTION
OF MARINE POLLUTION DURING OIL TRANSFER
OPERATIONS BETWEEN SHIPS AT SEA**

Correspondence Group draft amendments to MARPOL Annex I, Chapter 8

Submitted by ICS, IADC, BIMCO, INTERTANKO, IPTA and OCIMF

SUMMARY

Executive summary: This document comments on the work of the Correspondence Group developing draft amendments to MARPOL Annex I, Chapter 8 for the Prevention of Marine Pollution during Oil Transfer Operations between Ships at Sea. An alternative draft Chapter 8 is attached at annex

Action to be taken: Paragraph 11

Related documents: MEPC 53/20, MEPC 53/20/2, MEPC 53/20/3, BLG 10/15
BLG 10/15/1, BLG 10/15/2 and BLG 10/15/3

Introduction

1 This document is submitted in accordance with the provisions of paragraph 4.10.5 of the Guidelines on the organization and method of work (MSC/Circ.1099 - MEPC/Circ.405), and provides comment on document BLG 11/15/XX submitted by the Correspondence Group (CG) established by BLG 10 to develop draft amendments to MARPOL Annex I, Chapter 8 for the Prevention of Marine Pollution during Oil Transfer Operations between Ships at Sea.

2 OCIMF and ICS submitted MEPC 53/20/2 which included detailed technical comment, in response to MEPC 53/20 (Spain/Mexico). Both associations have continued to participate fully in discussion of this matter at both MEPC and BLG and provided the CG with reasoned argument and draft text to support our joint proposals. We consider that the final document submitted on behalf of the Correspondence Group does not sufficiently reflect comment submitted by ICS/OCIMF. We have concern that the draft regulation as submitted unnecessarily complicates practical operational requirements for Oil Transfer Operations between Ships at Sea and sets unacceptable legal precedents without any compelling need for such action having been demonstrated.

Comment

3 Since 1975 industry has self regulated and controlled many thousands of ship to ship oil transfer (STS) operations, the vast majority of which have been carried out safely, efficiently and with no adverse impact on the marine environment. The annex to MEPC 53/20/2 (ICS/OCIMF) provides evidence of independent reports and assessments that STS operations conducted as above over a period of many years present little risk of pollution:

- USCG study. Risk Evaluation of Ship-to-Ship Oil Transfer. (WM von Zharen August 1994 (Maritime and Environmental Management Research, Inc); *the lightering transfer process itself showed the least risk of any transfer method including that of deepwater ports.*
- Oil Spill Risks from Tank Vessel Lightering. (National Academy Press 1998); *Current lightering operations, which are conducted in a variety of locations in the United States using a variety of methods, are safe.*
- DNV Report on Risk Assessment of Ship to Ship Transfer for the Marine Safety Agency (1997); *Compared to the total risk of marine oil pollution from ships, ship to ship transfer is estimated to provide only 1%... This suggests the current absolute risk level is small.*

STS operations have maintained a good safety record through a combination of controls which include following the IMO Guideline, “*Manual on Oil Pollution, Section 1-Prevention*”, self regulation by the application of industry best practise guidelines and pragmatic regulation of STS operations under the jurisdiction of the coastal state(s) involved.

4 The CG draft regulation seeks to provide detail by which STS operations may be safely regulated. Unfortunately the detail is insufficient to adequately address the range of complex operational and technical requirements necessary to regulate such operations. Such detail is available in IMO and industry guidelines. Since 1975 ICS/OCIMF have jointly published the “*Ship to Ship Transfer Guide Petroleum*” this best practice guide is considered within industry and by many Administrations to offer definitive best practice advice. The publication is regularly revised with the 4th edition having being published in 2005. This comprehensive guide comprises 10 Chapters and 3 Appendices which include 5 separate and detailed checklists. IMO publishes the “*Manual on Oil Pollution*”. Section 1 addresses Oil Prevention with chapter 6 covering; ‘*Trans-shipment of Oil and Oil Products from Vessel to Vessel while underway or at Anchor (Lightering)*’. The co-sponsors consider that together with industry best practice guidelines, IMO guidelines already adequately address requirements for the prevention of marine pollution during oil transfer operations between ships at sea.

The co-sponsors oppose the creation of mandatory provisions to the regulation in this matter and strongly urge that the new Chapter 8 regulations should provide guidance only.

5 The co-sponsors note IMO Assembly Resolutions, A.500(XII), A.777(18) and A.900(21) which draw attention to recommendations including, “*proposals for new conventions or amendments to existing conventions be entertained only on the basis of clear and well-documented compelling need and having regard to the costs to the maritime industry and the burden of the legislative and administrative resources of Member States*”. In the opinion of the co-sponsors compelling need has not been demonstrated for new detailed regulation as proposed by the CG, but

the new regulation should make reference in a footnote to existing IMO and industry best practice guidelines.

ICS/OCIMF understand that Section 1 of the IMO Manual on Oil Pollution which was revised in 1983 is currently out of print. If invited by the Organization ICS/OCIMF would participate fully in a review and any subsequent revision of the guidelines.

6 At paragraph 3.4 of the annex to MEPC 53/20/2, ICS/OCIMF advised that: *“A mechanism for the control of activities on the high seas that affect a State’s coastline should be carefully considered. Any such mechanism should be practical and enforceable, without causing undue delay or unreasonable restriction to an operation that otherwise complies with all the required controls set by International Conventions. For this reason the issue must undergo full appraisal by the IMO Legal Committee and review against UNCLOS provisions”*. The co-sponsors maintain this position which received support from the Committee and note further comment from the USA regarding the 4th draft of the CG report: *“The proposal to apply these regulations on the high seas raises serious questions of international law. It remains unclear as to why this action needs to be mandatory given the authority that coastal states currently have under UNCLOS. We strongly urge that law of the sea experts be actively involved in the drafting of the jurisdictional provisions of these proposed amendments”*.

The CG draft Regulation 40.1 scope includes fixed and floating platforms. ICS/OCIMF consider that revised Annex I MARPOL 73/78 Chapter 7, Resolution MEPC.117 (52), Resolution MEPC.139 (53) and UNCLOS article 56 are applicable and address these operations. Therefore it would be inappropriate for an additional IMO instrument to establish further regulation over such operations.

7 Comment regarding the CG proposed draft Chapter 8 includes:

Regulation 40 – Scope of application

This regulation will have an unpredictable effect on oil supply to offshore oil and gas exploration and production facilities as well as on international bunkering operations.

FSU/FPSO operations are already addressed by MARPOL 73/78 Chapter 7 and UNCLOS article 56.

Application in the Exclusive Economic Zone should be referred to IMO Legal Committee for consideration and review.

Regulation 41 – Notification

Requirements are too prescriptive but fail to address all the items covered by existing IMO and industry best practice guidelines.

Requirement for immediate contact with national contact point is impractical, unnecessary and unreasonable.

It is not appropriate to mandate compliance with all instructions communicated by national contact point.

Pollution control measures are addressed by SOPEP and within existing IMO Guidelines, Manual on Oil Pollution – Section II ‘Contingency Planning’ – Section IV ‘Combating Oil Spills’ and industry best practice guidelines ICS/OCIMF - Ship to Ship Transfer guide ‘Petroleum’. The aim should be achieved by a reference in a footnote to appropriate guidelines.

Regulation 42 – Checklist

Checklists should be as required by existing best practice guidelines and be retained for one year.

Checklist should only be available to a State Party to the present convention.

Regulation 43 – General rules on safety and environmental protection

Regulation should address rights of coastal state being consistent with UNCLOS.

Details of manning and communications are addressed within IMO and industry guidelines.

Conclusion

8 ICS and OCIMF consider that appropriate amendments to MARPOL ANNEX I for the prevention of marine pollution during oil transfer operations between ships at sea should be developed and agreed. An alternative draft Chapter 8 of the revised MARPOL Annex I to that proposed by the CG is provided at annex.

9 Noting that no compelling need has been demonstrated for new detailed mandatory regulation, ICS and OCIMF strongly urge that the new Chapter 8 regulations should provide guidance only.

Proposal

10 In recognising the intent of the CG Terms of Reference , the ICS/OCIMF proposal, at annex:

- Regulation 40
Clarifies the draft regulation’s scope
- Regulation 41
Simplifies notification requirements
- Regulation 42
Text supports the co-sponsors believe that the most effective form of regulation in this matter is self-regulation, and that STS operations should follow best practice guidelines approved by the appropriate Administration.
- Regulation 43
Addresses the rights of the State party within whose jurisdiction/territorial sea the oil-transfer operation(s) will be conducted.

Action requested of the Sub-Committee

11 The Sub-Committee is invited to consider the proposed draft amendments to MARPOL Annex I, Chapter 8 and decide as appropriate.

ANNEX

(Draft) CHAPTER 8

PREVENTION OF POLLUTION DURING OIL TRANSFER OPERATIONS BETWEEN SHIPS AT SEA

Regulation 40

Scope of application

1 The regulations contained in this chapter apply to ships, of 400 gross tonnage and above and oil tankers of 150 gross tonnage and above engaged in transfers of oil in bulk [of more than 500 metric tonnes] within the [jurisdiction] [territorial sea] of a State Party.

2 This regulation shall not apply to oil transfer operations associated with fixed or floating platforms including drilling rigs, floating production, storage and offloading facilities (FPSO's) used for the offshore production storage, or transfer of oil, and floating storage units (FSU's) used for the storage or transfer of produced oil.¹

3 This regulation shall not apply to ships specified in paragraph 1 of this regulation operating within the [jurisdiction] [territorial sea] of a State Party for the purpose of transferring bunker fuel. Such operations shall be authorised by the Administration of the State Party within whose [jurisdiction] [territorial sea] they take place.

Regulation 41

Notification

1 Any ship specified in regulation 40 that plans oil transfer operations shall communicate its intentions to the Administration of the State within whose [jurisdiction] [territorial sea] they intend to operate, not less than 2 days in advance, of the scheduled transfer operation or as soon as practicable thereafter.

2 If the estimated time of arrival (ETA) at the transfer location or zone changes by more than twelve hours, the master, owner or agent of each ship shall provide a revised ETA to the Administration specified in paragraph 1 of this regulation.

3 Notification shall be given to the Administration, specified in paragraph 1 of this regulation², and shall include at least the following³:

- a. Name, flag, call sign and IMO No. of the ships involved in the oil transfer operation;
- b. Date, time and geographical location of the planned oil transfer operations;
- c. Oil type and quantity;
- d. Planned duration of operation;
- e. Identification of Ship To Ship provider or person in overall advisory control and contact information.

¹ Revised Annex I MARPOL 73/78 Chapter 7 (Resolution MEPC.117(52)) and UNCLOS article 56 are applicable and address these operations

² The national operational contact point as listed in document MSC/Circ.1103, MEPC.6/Circ.9 of 31 December 2003 or its subsequent amendments

³ Revised Annex I MARPOL 73/78 Chapter V (Resolution MEPC.117(52)) requires that every tanker of 150 gross tonnage and above and every ship other than an oil tanker of 400 gross tonnage and above shall carry on board a shipboard oil pollution and emergency plan approved by the Administration

Regulation 42

General Rules on safety and environmental protection

1 The persons responsible and in charge of advising the ships' master regarding the oil transfer operation specified in regulation 40, shall follow established, ship to ship (STS) oil transfer best practice guidelines and check lists, as determined by the Administration of the State Party within whose [jurisdiction] [territorial sea] the oil transfer operation will take place.⁴

2 The person in over all advisory control of the operation as specified in regulation 40 shall meet the minimum competency requirements, as determined by the Administration of the State Party within whose [jurisdiction] [territorial sea] the oil transfer operation will take place.⁵

3 Records of the STS operation together with completed documentation including check lists identified in STS oil transfer guidelines referenced in paragraph 1 of this regulation, shall be retained on board the participating ships for one year and be readily available for inspection by a State Party to the present Convention.⁶

4 Regulation 43

Rights of the coastal State (consistent with UNCLOS terms)

The Administration of the State Party within whose [jurisdiction] [territorial sea] oil transfer operations between ships take place as specified in regulation 40, may adopt measures consistent with established ship to ship oil transfer best practice guidelines, as referenced in regulation 42.

⁴ ICS/OCIMF Ship to Ship Transfer Guide Petroleum, Fourth Edition.
IMO Guideline, Manual on Oil Pollution, Section 1 Prevention.

⁵ ICS/OCIMF Ship to Ship Transfer Guide Petroleum, Fourth Edition.
IMO Guideline, Manual on Oil Pollution, Section 1 Prevention.

⁶ Revised Annex I MARPOL 73/78 Chapter 3 and Chapter 4 (Resolution MEPC.117(52) ; requirements for recording bunkering and oil cargo transfer operations in the Oil Record Book.