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POLLUTION PREVENTION AND RESPONSE

Comments on document MEPC 75/10/Add.1, paragraph 3.5 on draft amendments to MARPOL Annex I to incorporate a prohibition on the use and carriage for use as fuel of heavy fuel oil by ships in Arctic waters

Submitted by FOEI, Greenpeace International, WWF, Pacific Environment and CSC

SUMMARY

Executive summary: In response to document MEPC 75/10/Add.1, the co-sponsors raise concerns about the impact and effectiveness of the draft prohibition on the use and carriage for use as fuel of heavy fuel oil (HFO) by ships in Arctic waters. Recently published work indicates that only 30% of HFO carriage and 16% of HFO use would be banned when the regulation comes into effect, and that it is likely that the amount of HFO carried and used in the Arctic will increase following the ban taking effect. In addition, further concerns are expressed regarding the draft regulation and its impact on the Arctic environment. The co-sponsors invite the Committee to take into account the information provided and to consider modifying the proposed draft amendment to MARPOL Annex I (i.e. new draft regulation 43A) in order to approve a meaningful prohibition on the use and carriage for use as fuel of heavy fuel oil by ships in Arctic waters.

Strategic direction, if applicable: 6

Output: 6.11

Action to be taken: Paragraph 12

Related documents: MEPC 75/10/Add.1; PPR 7/22, PPR 7/22/Add.1 and MEPC 72/11/1

Introduction

1 This document provides comments on document MEPC 75/10/Add.1 (Secretariat) on remaining matters emanating from PPR 7, specifically the draft prohibition on the use and carriage for use as fuel of heavy fuel oil (HFO) by ships in Arctic waters, and is submitted

in accordance with paragraph 10 of Circular Letter No.3985/Rev.1 on Resumption of the seventy-fifth session of the Marine Environment Protection Committee (16 to 20 November 2020).

2 Document MEPC 72/11/1 (Finland et al.) contains the original proposal for the Arctic HFO ban. In paragraph 3 of that document, the co-sponsors stated that: "A single HFO spill could have devastating and lasting effects on fragile Arctic marine and coastal environments. In addition, Arctic shipping is projected to continue to rise, thus increasing the risk of a spill. For these reasons, the ban on HFO should be implemented as soon as possible, and any delay in implementation of the ban by eligible ships should be short-lived."

3 In February 2020, PPR 7 agreed on the draft text of the Arctic HFO regulation, found in annex 12 to document PPR 7/22/Add.1, which would start to prohibit the use and carriage of HFO as fuel in July 2024 but would include exemptions and waivers that would allow most ships to continue to carry and use HFO until July 2029. In paragraph 2, the draft text allows exemptions for ships with protected fuel tanks. In paragraph 4, it allows Arctic States to issue waivers for ships flying their flag, while in waters subject to their sovereignty or jurisdiction.

New evidence on the impact of exemptions and waivers on HFO carriage and use

4 In September 2020, the International Council on Clean Transportation (ICCT) published a white paper¹ analysing how effective the proposed prohibition would be in reducing HFO carriage, HFO use and Black Carbon emissions, taking into account the proposed exemptions and waivers. ICCT assumed that all ships eligible for exemptions and waivers would use them, and that ships would not reflag or alter their routes to take advantage of waivers. It was also assumed that Very Low Sulphur Fuel Oils (VLSFO, 0.5% sulphur content) would meet the definition of HFO by viscosity, density, or both, based on a statement from IBIA delivered at PPR 7, where they explained that 93-95% of VLSFOs tested in January and February of 2020 met the definition of HFO.²

5 The ICCT White Paper found that due to the exemptions and waivers, the proposed Arctic HFO ban would allow 74% of the HFO-fuelled fleet to continue to use HFO. As a result, only 30% of HFO carriage and 16% of HFO use would be banned, reducing Black Carbon emissions by only 5%. Unfortunately, the effectiveness of the ban is expected to diminish over time, until exemptions and waivers expire in 2029. As older ships applying the ban leave the Arctic fleet, newer ships built with protected fuel tanks will enter the fleet and qualify for exemptions. Additionally, if ships reflag to Arctic States, more would qualify for waivers, further eroding the ban's effectiveness. It is possible, therefore, that the proposed ban would actually result in more HFO being used in the Arctic than today, until exemptions and waivers expire in almost 10 years' time.

6 To help policymakers understand the consequences of different combinations of exemptions and waivers, ICCT analysed how the amount of HFO carriage, HFO use and Black Carbon emissions change under different combinations of exemptions and waivers, as shown in the figure below. ICCT concluded that while limiting the scope of exemptions and waivers would result in banning a larger proportion of HFO in the Arctic, a ban with no exemptions or waivers provides the greatest level of protection.

¹ Comer, B., Osipova, L., Georgeff, E. and Mao, X. (2020). *The International Maritime Organization's proposed Arctic heavy fuel oil ban: Likely impacts and opportunities for improvement*. Retrieved from the International Council on Clean Transportation at: <https://theicct.org/publications/analysis-HFO-ban-IMO-2020>

² IBIA (2020). IBIA statement on black carbon and 0.50%S fuel blends at IMO's PPR 7. Retrieved from: <https://ibia.net/2020/03/10/ibia-statement-on-black-carbon-and-0-50s-fuel-blends-at-imos-ppr-7/>

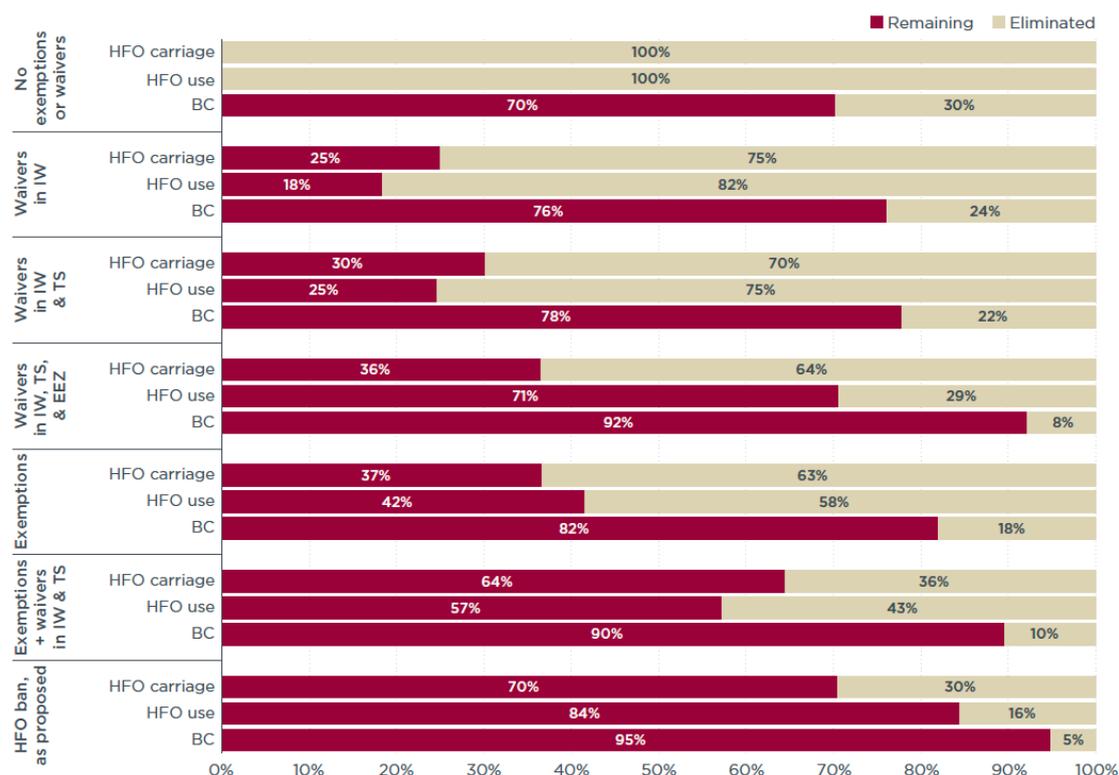


Figure: How different combinations of exemptions and waivers affect HFO carriage, HFO use and Black Carbon emissions in the Arctic. Source: Figure ES1 of the ICCT white paper. [IW = internal waters, TS = territorial seas, EEZ = exclusive economic zone, BC = black carbon]

Further concerns on the consequences of waivers to the regulation

7 In addition to the new evidence on the impact of exemptions and waivers on the effectiveness of the draft IMO Arctic HFO regulation, the co-sponsors are also concerned that by treating five Arctic coastal States differently and thus differentiating between flags, the regulation will have negative environmental consequences. Potentially over 70% of HFO use and 36% of carriage in the Arctic (based on 2019 data) could continue as a consequence of the waiver clause after the regulation comes into effect. The current wording of the waiver clause will result in a higher environmental standard being applied to ships operating in the Arctic than will be required for those ships flagged by one of five Arctic coastal States, operating in waters subject to the sovereignty or jurisdiction of that State, and successfully applying for a waiver. Such an approach is inconsistent with international approaches to protection of the marine environment (grounded in principles of fairness and non-discrimination) and not in keeping with IMO's Strategic Plan 2018-2023 which acknowledges the need for "a level playing field for all States involved in international shipping". It also leaves the Arctic coastal States in the invidious position of enforcing more stringent environmental protection for ships flagged by other countries than for their own ships.

8 The co-sponsors are also concerned that the granting of waivers will result in relaxing international environmental standards in the EEZ and territorial seas of Arctic coastal States. The United Nations Convention on the Law of the Sea (UNCLOS) requires that flag States adopt regulations for their EEZs for the prevention, reduction and control of pollution from vessels flying their flags and these rules must have at least the same effect as generally accepted international rules and standards. Since a waiver will have a diminishing effect rather than have a comparable effect on protection of the marine environment, the use of waivers in

the EEZs raises important legal questions about whether the waiver provision is compatible with UNCLOS or with the general obligation placed on Parties to MARPOL to prevent the pollution of the marine environment by the discharge of harmful substances or effluents containing such substances. Similarly relaxing the international standards set by the Arctic HFO regulation in territorial seas will set a very poor precedent of relaxing international environmental standards in territorial seas (usually the approach in territorial seas is to adopt stronger environmental standards than in EEZs or on the high seas).

9 Issuing waivers also increases the risk of a catastrophic HFO spill in the Arctic and raises serious concerns about transboundary harm. Pollution is not bound by manmade legal boundaries. The international community has long recognized such a risk. UNCLOS requires States to "take all measures necessary to ensure that activities under their jurisdiction or control are conducted so as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights...". The issuance of waivers by Arctic coastal States undermines the letter and spirit of UNCLOS as well as one of the key objectives of the ban which is to safeguard local coastal communities and the marine environment on which they rely.

10 In addition, issuing waivers could also result in increased demand for waivers across the Arctic or in the reflagging of vessels to a State which is willing or able to issue waivers thus resulting in an increase in the volume of HFO being carried and used in the Arctic.

11 A further concern is the adoption of an approach which accepts that the risk of HFO spills will not be prevented in the waters of greatest importance to Arctic indigenous communities. The co-sponsors share the concerns expressed by some Arctic communities about the potential for socioeconomic costs in the event of a prohibition on the use and carriage of HFO in the Arctic but believe that there are higher socio-economic benefits associated with eliminating HFO spills in the Arctic. The co-sponsors believe that national governments should support the transition away from HFO to distillate fuel or other alternative cleaner fuels and ultimately away from fossil fuels altogether in order to mitigate any negative socio-economic impacts for northern communities.

Action requested of the Committee

12 The Committee is invited to consider the information provided in paragraphs 4 to 11 and to agree to strike or modify clause 2 and clause 4 of the proposed draft amendment to MARPOL Annex I (draft new regulation 43A), as set out in annex 12 to document PPR 7/22/Add.1, ahead of approving a meaningful prohibition on the use and carriage for use as fuel of heavy fuel oil by ships in Arctic waters.
