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CONSIDERATION AND ADOPTION OF AMENDMENTS TO MANDATORY INSTRUMENTS

Comments on the draft amendments to MARPOL Annex I

Submitted by FOEI, Greenpeace International, WWF, Pacific Environment and the
Clean Shipping Coalition

SUMMARY

Executive summary: The co-sponsors raise concerns about the effectiveness of the draft prohibition on the use and carriage for use as fuel of heavy fuel oil (HFO) by ships in Arctic waters proposed in document MEPC 76/3/1. Despite extensive deliberations in the PPR Sub-Committee, the draft amendments will provide little protection for Arctic waters for most of this decade and are also inconsistent with international approaches to the protection of the marine environment. The Committee is invited to consider the information provided and make the necessary changes to the draft regulation to secure a meaningful prohibition on the use and carriage for use as fuel of HFO by ships in Arctic waters.

Strategic direction, if applicable: 6

Output: 6.11

Action to be taken: Paragraph 12

Related documents: MEPC 76/3/1; MEPC 75/10/7; MSC-MEPC.1/Circ.5 and Circular Letter No.3985/Rev.1

Introduction

1 This submission is made in accordance with the provisions of paragraph 6.12.5 of MSC-MEPC.1/Circ.5 on the *Organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies* and in line with the advice provided in Circular Letter No.3985/Rev.1. It provides comments on document MEPC 76/3/1 containing the draft amendments to MARPOL Annex I, approved at MEPC 75.

2 The draft amendments to MARPOL Annex I were approved after lengthy discussions on how best to reduce the risks from the use and carriage of HFO as fuel by ships in Arctic waters. Despite extensive deliberations, detailed analysis has shown that the draft amendments will provide little protection of Arctic waters for most of this decade. In fact, the proposed regulation 43A, paragraph 2, of MARPOL Annex I, which provides an exemption for ships with a protective fuel tank, and paragraph 4, which relates to flag State waivers, are major loopholes that will likely render the Arctic more vulnerable to the risks of use and carriage of HFO.

3 Of particular concern is that after extensive consideration of both the positive and negative impacts of banning the use and carriage of HFO by ships operating in Arctic waters, the PPR Sub-Committee agreed to include these overt loopholes in the draft amendments, without any assessment or consideration of their effect on Indigenous and other communities or the Arctic environment.

4 To better understand the consequences of the proposed regulations 43A.2 and 43A.4 of MARPOL Annex I, the International Council on Clean Transportation (ICCT) published a white paper analyzing 2019 Arctic shipping data to assess how effective the draft amendments will be in reducing the use and carriage of HFO by ships in Arctic waters.

5 Alarmingly, the analysis found that, due to the possibility of exemptions and waivers when the regulation takes effect in July 2024, the proposed Arctic HFO "ban" would allow 74% of the HFO-fuelled fleet to continue to use HFO. As a result, based on 2019 data, only 30% of the amount of HFO being carried and 16% of the amount of HFO being used in the Arctic will be prohibited in 2024. These numbers account for an array of anticipated factors.

6 Firstly, with respect to the exemption for ships with protective fuel tanks, there is a real risk that as older ships with unprotected fuel tanks leave the fleet and are replaced by newer ships, even more ships could qualify for the exemption and continue to carry and use HFO in the Arctic. Secondly, there is a risk that if Arctic coastal States liberally grant waivers to their own flagged ships operating in waters subject to the sovereignty or jurisdiction of the State, ships may find it economically beneficial to reflag to an Arctic State in order to qualify for a waiver and continue to carry and use HFO in Arctic waters.

7 A further concern is that ICCT's numbers may underestimate the amount of HFO that could continue to be used in the Arctic because they do not account for expected increases in shipping traffic over the next eight years.

8 In addition to the environmental consequences outlined above, the proposed regulation also raises serious concerns related to international law and equity. Article 211(2) of the United Nations Convention on the Law of the Sea (UNCLOS) requires that flag States adopt regulations for their exclusive economic zones (EEZs) for the prevention, reduction and control of pollution from vessels flying their flags and that rules have at least the same effect as generally accepted international rules and standards. Allowing Arctic coastal States to grant waivers for their EEZ and territorial seas runs contrary to this UNCLOS provision as it will result in lower environmental standards in these areas.

9 Furthermore, differentiating between flag States is inconsistent with international approaches to the protection of the marine environment, which are grounded in principles of fairness and non-discrimination. Ultimately, the current wording of the waiver clause will allow ships flagged by one of five Arctic coastal States and operating in waters subject to the sovereignty or jurisdiction of that State, to follow less stringent environmental regulations than other ships. In this respect, the regulation is discriminatory.

10 Finally, issuing waivers also raises the possibility of transboundary harm, as pollution is not bound by man-made legal boundaries. Article 194(2) of UNCLOS requires States to "take all measures necessary to ensure that activities under their jurisdiction or control are so conducted 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.

11 For these reasons, the co-sponsors recommend that paragraph 4 be removed from the draft amendments to regulation 43 of MARPOL Annex I. In the event that the waiver provision remains, the co-sponsors urge Arctic States to issue waivers only in exceptional circumstances. The co-sponsors share the concerns expressed by some Arctic nations about the potential for socioeconomic costs in the event of a prohibition on the use and carriage of HFO in the Arctic. However, there will also be substantial socio-economic consequences for Indigenous communities in the event of a HFO spill in Arctic waters. For these reasons, the co-sponsors urge Arctic States to provide a clear justification and a high-level of transparency for each and every waiver that is issued in their jurisdiction, consistent with paragraph 5 of the draft amendments to MARPOL Annex I Regulation 43A.

Action requested of the Committee

12 The Committee is invited to consider the information provided in paragraphs 2 to 11 and to agree to delete or modify paragraphs 2 and 4 of the proposed draft amendment to regulation 43A of MARPOL Annex I, in order to secure a meaningful prohibition on the use and carriage for use as fuel of HFO by ships in Arctic waters.
