SUB-COMMITTEE ON BULK LIQUIDS
AND GASES
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Agenda item 15

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PROPOSED AMENDMENTS TO ANNEX I OF MARPOL 73/78 FOR THE PREVENTION OF MARINE POLLUTION DURING OIL TRANSFER OPERATIONS AT SEA.

Comments on document BLG 10/15

Submitted by Oil Companies International Marine Forum (OCIMF) and International Chamber of Shipping (ICS)

SUMMARY

Executive summary: This paper provides comments on proposals made by Spain and Mexico in paper BLG 10/15, which seek to bring the routine practice of ship to ship transfers of oil under the regulatory regime of MARPOL. It also provides technical responses to a number of issues within the paper, which argues for particular operations to be regulated. These responses are provided to clarify some of the operational issues raised in BLG 10/15 and to facilitate discussions on the proposed action items.

Action to be taken: Paragraph 13

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

1. This document is submitted in accordance with the provisions of paragraph 4.10.5 of the Guidelines of the organization and method of work of the Maritime Safety Committee and the Marine Environment Protection Committee and their subsidiary bodies (MSC/Circ.1099 - MEPC/Circ.405), and provides comments on document BLG 10/15 (Spain and Mexico).

Introduction

2. OCIMF and ICS as co-authors of the joint industry publication Ship to Ship Transfer Guide (Petroleum), would like to thank Spain and Mexico for their paper BLG 10/15 which brings to the attention of the Organization the issues surrounding oil transfers between vessels at sea.

3. OCIMF and ICS support, in principle, the concept of regulations covering certain aspects of the transfer of oil cargoes (ship to ship or STS) worldwide, including fuel transfer operations, provided such measures are fully evaluated and justified. These proposals must as a minimum provide an enhancement to the existing regime in particular reducing further the low level of incidents arising in this sector.

4. OCIMF and ICS do not accept that STS operations are inherently high risk. When these operations are performed according to industry's own standards they can be performed safely and without risk to the environment. For that reason the introduction of a legal framework should only be used to ensure that such standards are followed by all, regardless of geography.

5. Edition 4 of the OCIMF/ICS "Ship-to-Ship Transfer Guide (Petroleum)" has recently been published. This latest edition incorporates updated industry standards and best practice for managing these operations. The role of the human element in ensuring safety is given greater prominence in the 4th Edition. This includes the requirement to ensure that service companies can provide evidence of the quality and competence of any personnel employed to oversee or assist in the operation.

6. For a number of years these guidelines have been followed on a voluntary basis by industry and have been incorporated in some national legislation. When the guidance given in the STS Transfer Guide (Petroleum) has been followed high levels of safety exist. The industry experience on the operational issues should be taken into consideration, but not necessarily be incorporated into the legal framework.

7 Although it is a rare occurrence, given the sometimes disastrous consequences that incidents involving oil during its transportation or transfer can give rise to, it is understandable that some States should wish to see every aspect of this sector scrutinised to ensure the highest standards of operational integrity are applied. Indeed, OCIMF and ICS fully support this need and note that it is already paramount in our respective member's daily operational considerations.

8. However, given the increasing use of regulations and directives at national, regional and international level to increase the potential for sanctions to be applied to ships masters, crews, ship owners/operators and all those involved in the transportation chain, it is in our view imperative that new proposals to further extend the boundary of regulation into operational areas are fully evaluated and justified.

9. This document provides technical input to the observations and issues raised by Spain and Mexico in their paper BLG 10/15 to assist in the proposed discussions and action requested in paragraph 11 of the said paper.

OCIMF and ICS initial consideration of the Spain and Mexico proposals.

10. ICS and OCIMF cannot support certain specific proposed regulations within BLG 10/15 as they do not consider that these proposals have been sufficiently justified or that a compelling need has been identified. In particular, OCIMF and ICS feel that unnecessary controls or proposals to ban STS operations in MEPC adopted special areas or PSSAs require careful consideration and, along with the jurisdictional issues arising from a desire to control legitimate operations in adjoining States' territorial waters, believe that these matters should also be directed towards the IMO Legal Committee for consideration

11. In supporting the principle of regulations OCIMF and ICS agree the technical and operational issues should be fully evaluated and justified by the BLG Sub-Committee. OCIMF and ICS will participate in either a correspondence group or a working group should the Sub-Committee decide to establish such groups to further consider these matters.

Specific comments on the Spain and Mexico proposals.

12 In answer to the specific issues raised by BLG 10/15 that Spain and Mexico have identified as justification for the proposals, and the proposed regulations contained in the Annex to the paper, OCIMF and ICS have prepared detailed technical comments in Annex I to this paper for the benefit of the discussions at BLG and request these be taken into consideration.

Action required of the Sub-Committee

13. The Sub-Committee is invited to note the comments contained in this paper and the Annex in its consideration of the proposal from Spain and Mexico in paper BLG 10/15. In addition should it be decided to convene a correspondence or working group on this matter ICS and OCIMF would request that the Sub-Committee includes consideration of this submission in the Terms of Reference for such groups.

ANNEX 1

OCIMF and ICS TECHNICAL AND OPERATIONAL COMMENTS ON BLG 10/15

OCIMF and ICS have prepared the following specific comments in direct response to the technical points raised by Spain and Mexico in their paper BLG 10/15 and these should be read in direct reference to the paragraphs as identified;

2. STS operations are referred to in this paragraph (and elsewhere in the paper BLG 10/15) as "High Risk". This statement is not supported by studies or practical experience.

Conclusions drawn from different authoritative studies[1] indicate that:

- The frequency of oil spills from Ship to Ship transfers of oil is estimated to be 1% of the total risk of marine oil spills from ships.
- For offshore transfers of oil the predicted probability of an incident is 0.34% with an individual spill size per incident of 3 barrels.

This low incidence of spills during STS operation is supported by practical experience where over a ten year period records show an incident factor of 0.16% with a <u>total</u> of 8 barrels (1.2 m^3) of oil split (maximum incident 6 barrels (0.95 m^3).

In summary it has been established that well managed STS activities do not present any higher risk than an in port transfer of oil, and indeed the transit in port to a berth with a vessel often constrained by her draft in high traffic density scenarios, can in fact present a higher risk than a well managed transfer operation in a recognized transfer area.

The above shows the damaging potential of these operations is significantly less than stated in paragraph 8 of BLG 10/15 and consequently that submission has not established compelling need for regulation, as proposed, to replace the effective current self regulation practised by industry. The emphasis for Coastal States should be on permitting STS under controlled conditions in approved areas where it is reasonable and practical to do so.

3. This paragraph states that ship owners avoid transfers of oil in port "where they can be performed without risk" due to cost. However, the transfer of oil by STS is acknowledged as not being higher risk than transfer in port (see references above). Contrary to the claim within BLG 10/15, operations within ports cannot be

[1] Studies referenced include:

- USCG study quoted in "Risk Evaluation of Ship-to-Ship Oil Transfer (WM von Zharen August 1994 (Maritime and Environmental Management Research, Inc) which concluded that *"the lightering transfer process itself showed the least risk of any transfer method including that of deepwater ports"*.
- The report "Oil Spill Risks from Tank Vessel Lightering" (National Academy Press 1998) concluded that; *"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) concluded; *"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"*.

carried out “without risk”. The act of approaching and entering port carries its own risk.

It is agreed that freight economics affecting the transport of crude and other bulk liquids over long distances in larger parcels is cheaper than in smaller vessels compatible with the size of a destination port e.g. crude oil delivered to US Gulf of Mexico (GOM) from the Persian Gulf is 70% cheaper when lightered from VLCCs in the GOM than transported directly from the Persian Gulf in smaller tankers.

4. Tankers that remain in the same location such as fuel depot tankers should be subject to controls and requirements of the coastal States that may be affected in the event of an incident. Coastal States should be able to control such activities in their own territorial waters and EEZ.

Regulations via existing Conventions (e.g. MARPOL 73/78) such as that proposed, could be an appropriate means to apply minimum standards to such operations, including regulation of STS Service Providers (i.e. service companies providing STS equipment, vessels, advisory/management personnel), and include provisions for logistical support for emergency response capability and companies that operate “mother ship” activities.

Flag States should be obligated to conduct mandatory, periodic review of such operations conducted under their flag. A representative body for the interested coastal states could undertake licensing, or other approval of intended STS locations.

5. The affirmation that the current International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969, is not adequate to permit coastal States to control the activities of other flag State vessels upon the high seas is agreed. A mechanism should be in place to permit STS activities to be subject to Convention controls, and enforceable on the high seas.

6. It is recognized that having a spill response plan, backed up by an agreement with a Spill Response Provider and weather monitoring and forecast ability, should be within the controls that are required for STS activities. The means of providing emergency and oil spill response could be either through arrangement with member State authorities or by private response companies. The means of implementation of this contingency should remain flexible, but subject to approval before the activity takes place.

Where these operations are associated with offshore oil exploration and production the parameters for the applicability of any proposed legislation will have to be considered more thoroughly when further details are made known.

It is not envisaged an amendment to Annex 1 covering STS operations would apply to transfers within the offshore oil industry e.g. oil rig supply vessels. Further, off-takes at offshore terminals (e.g. FPSO/FSU’s and SBM operations) are not classed as STS transfers.

7. Activities that take place within the jurisdiction and are likely to impact a coastal State should be subject to agreement with the coastal State, such agreement

should not be unreasonably withheld; i.e. where all regulatory requirements are satisfactorily complied with by an STS Operator and Ship Owners, approval should not be withheld.

Where more than one State has an interest in an STS location by virtue of its close proximity and potential impact in the event of an incident) approval by more than one State may be required. However coastal States will require a mechanism for effective communication and agreements in this regard.

8. See paragraph 2 above.

10.2 To include fuel supply (i.e. bunkering) between ships would require the preparation of Industry guidance similar to the ICS/OCIMF STS Guide. While existing STS guides can be referenced as good practice, they do not currently specifically cover this type of operation.

The principles of any new industry guidelines for bunkering will require to be adhered to by all Operators conducting STS activities (including fuel), and this could extend to small barges not covered by the scope of IMO regulations. Such Industry guidelines will also require preparation for “inshore lightering”, which currently is not addressed by the STS Guides.

10.3 An arbitrary ban on STS activities in Special Areas or Particularly Sensitive Sea Areas (PSSAs) is not considered necessary or desirable. STS has been proven over a significant period to be able to be conducted safely and without incident where sound management is applied to all aspects of the operation. Conducting oil transfer operations in such areas should be considered on an individual case basis following a risk assessment taking into account all relevant factors.

Banning STS activities in special areas or particularly sensitive sea areas would force these activities to be conducted further from locations subject to controls with adequate contingency arrangements and into areas with less protection, fewer controls and reduced emergency response capability.

Banning STS activities in special areas or particularly sensitive sea areas would also have a significant, adverse affect on the economics of the energy industry and subsequent increased supply and transportation costs would affect consumers.

10.4 In principle, an activity that may affect a coastal state’s coastline should be subject to controls that are agreed and enforceable on the high seas (i.e. beyond the EEZ of a country). However the mechanism that is conceived for this must 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 this issues must undergo full appraisal by the IMO Legal Committee and review against UNCLOS provisions.

With reference to the Proposed Regulations of the Amendment to MARPOL Annex 1

Regulation 40 ~ *Scope of application*.

1. The scope may require expanding to include gases and noxious liquid substances.

2. It should also specifically exclude activities it does not apply to – Oilfield operations and FPSO/FSU and Offshore terminal activities, military vessels.

Regulation 41 ~ *Notification*

1. The proposed 2 hour notification period may be insufficient in many cases – draft UK MCA Regulations (MSN 1731) require 3 days notice to an Authority.

2. The inclusion of the STS Operator, (i.e. the company providing fenders, hoses and Co-ordinating Superintendent) should be within the notification. STS Operators shall be licensed by the Administration, subject to regular mandatory review by the National Authority.

3. Mandatory and regular communication should be required with the coastal authority, but "constant" communication as stated is impractical.

Regulation 42 ~ *Checklist*

Concise checklists are contained within the ICS/OCIMF STS Transfer Guide, and the additional checklist as appended is neither adequate nor necessary.

Regulation 43 ~ *General rules on safety and environmental protection*

These requirements could readily be implemented by seeking compliance with existing guidance provided in ICS/OCIMF STS Transfer Guides, ISGOTT and other industry guides. Further enhancements to cover any perceived gaps can be considered by industry.

Regulation 44 ~ *Powers of the coastal State*

Jurisdictional responsibility and the associated powers of the coastal state are not disputed however, how this will be utilised in STS operations will require definition. It is believed by OCIMF and ICS that the emphasis of coastal States on any proposed amendment should be on the identification of recognized STS areas; controls and regulations covering STS activities in such approved locations; and the agreement between interested coastal States and Administrations through appropriate Conventions.

It is our view highly desirable to undertake STS activities in identified locations under controls with adequate contingency arrangements rather than banishing such activities to areas with less protection, fewer controls and reduced emergency response capability.

Regulation 45 ~ *Transfer of oil in special areas or particularly sensitive sea areas*

STS activities should be able to be controlled within a State's EEZ. It is preferable to licence and monitor controlled activities in a favourable location rather than to arbitrarily ban STS activities and drive them further off-shore or unregulated areas.

Statistically, STS is both a proven and safe method of transfer of oil cargo between two vessels when conducted with competent management, effective controls and to industry best practice guidance. The banning of STS activities in PSSAs and Special Areas would impact regions where STS activities are already prevalent such as in the Mediterranean, NW Europe, Baltic, Black Sea, Red Sea, Gulf of Aden, Oman Sea, and Persian Gulf Area causing significant global impact on worldwide oil trade.

At most regulations should provide for consideration following a full risk assessment on a case by case basis. The emphasis should be on permitting STS under controlled conditions in approved areas where it is reasonable and practical to conduct STS activities.

Appendix 4 Checklist

The checklist proposed is believed to provide a lower level of operational integrity to those already in existence in the ICS/OCIMF STS Transfer Guide.