

BUNKERSPOT

STRANGE BREW

IMO 2020: EXOTIC BLENDS AND FONARS

INSIDE:

SUPPLY CHAIN TRANSPARENCY

ENERGY STORAGE SYSTEMS

SLOW STEAMING

FUTURE FUELS

Trouble brewing?

With the prohibition on using non-IMO 2020 compliant fuels coming into force on 1 January 2020, **Steve Simms** of Simms Showers takes a forensic look at FONARS – and finds some of the wording open to interpretation

In 1854, cholera victims overwhelmed London's hospitals. Patients arrived daily by the hundreds, then the thousands. Doctors thought they could do little except to treat patient symptoms. Most patients died within hours of arriving.

A physician named John Snow knew that the only way to stop the cholera epidemic was to find its source, not to try to treat thousands of patients' symptoms. He studied where the patients lived and found a single water pump many used. He had authorities disable the pump. Cholera bacteria had contaminated the pump water. By focusing on the source, Dr John Snow, known now as the 'Father of Epidemiology', stopped the epidemic.

When the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC) voted in October 2016 to set a maximum 0.50% sulphur content for marine fuels from 1 January 2020, its focus was on the 'patients'. At that point, the world had (and still has) tens of thousands of vessels depending on higher sulphur content, residual fuel. That was, mostly, what bunker suppliers had available at 'the pump'.

As 2020 approaches, the IMO is now turning its active focus to 'the pump': bunker suppliers. Part of this focus involves Fuel Oil Non-Availability Reports (FONARS). Bunker suppliers, and traders and brokers, at and after 2020 may be subject to fines, penalties, liability and de-licensing if they don't provide accurate information for their buyers to include in FONARS.

The MEPC 2019 Guidelines for Consistent Implementation of the 0.50% Sulphur Limit Under MARPOL Annex VI (Resolution MEPC.320(74))¹ explain that:

5.1.1 Regulation 18.2.1 of MARPOL Annex VI provides that in the event compliant fuel oil cannot be obtained, a Party to MARPOL Annex VI can request evidence outlining the attempts made to obtain the compliant fuel oil, including attempts made to local alternative

sources. Regulations 18.2.4 and 18.2.5 then require that the ship notifies its Administration and the competent authority of the port of destination on the inability to obtain compliant fuel oil, with the Party to notify IMO of the non-availability. This notification is commonly referred to as a Fuel Oil Non-Availability Report (FONAR).

FONARS aren't new. MARPOL Annex VI Regulation 18 has since MARPOL Annex VI's 1977 adoption required vessels to justify the use of non-compliant fuels. The current pertinent part of Regulation 18 ('Fuel oil availability and quality')² states the following:

2.1 If a ship is found by a Party not to be in compliance with the standards for compliant fuel oils set forth in this Annex, the competent authority of the Party is entitled to require the ship to:

.1 present a record of the actions taken to attempt to achieve compliance; and

.2 provide evidence that it attempted to purchase compliant fuel oil in accordance with its voyage plan and, if it was not made available where planned, that attempts were made to locate alternative sources for such fuel oil and that despite best efforts to obtain compliant fuel oil, no such fuel oil was made available for purchase.

2.2 The ship should not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance.

2.3 If a ship provides the information set forth in paragraph 2.1 of this regulation, a Party shall take into account all relevant circumstances and the evidence presented to determine the appropriate action to take, including not taking control measures.

2.4 A ship shall notify its Administration and the competent authority of the



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relevant port of destination when it cannot purchase compliant fuel oil.

2.5 A Party shall notify the Organization when a ship has presented evidence of the non-availability of compliant fuel oil.

In 2019, however, the IMO's MEPC introduced two new elements: an agreed FONAR form and greater bunker supplier responsibilities, not only to make compliant fuel available but also to provide accurate information when it is not.

In July 2019, the US Coast Guard took over the receipt of FONARS from the US Environmental Protection Agency (EPA). FONARS for vessels arriving at US ports must now be submitted to the Coast Guard's Captain of that Port (COTP). The Coast Guard states that although it does not 'require' any particular FONAR format, it 'suggest[s]' that vessels use the MEPC Regulation 320(74) FONAR form³. At the same time the Coast Guard warns that '[f]ailure to make [FONAR] notifications required... may result in a vessel control (e.g., detention) and/or enforcement action... civil penalties [or] refer[ring] the matter to the EPA' for further prosecution. So, it is clear that in order to receive full US Coast Guard consideration, vessels arriving in the United States and submitting FONARS should use and provide all information that the MEPC Regulation 320(74) FONAR form requires.

Those submitting FONARS, and bunker suppliers, traders and brokers providing information to them, should expect that the United States and most all other MARPOL VI members will require the full MEPC Regulation 320(74) FONAR form information.

Regulation 320(74) increases the focus on bunker suppliers with the following:

4.3 Control on fuel oil suppliers

4.3.1 Designated authorities should, if deemed necessary, take a sample and test fuel oils from bunker barges or shore bunker terminals...

4.3.2 If non-compliance, such as issuance of an incorrect BDN or a BDN without measurement of sulphur content, was found, the designated authorities should take appropriate corrective measures against the non-compliant supplier. In such case, the designated authorities should inform the Organization for transmission to the Member States of the non-compliant supplier, in accordance with the regulation 18.9.6 of MARPOL Annex VI and paragraph 4.4 of these Guidelines.

4.4 Information sharing related to non-compliances under MARPOL Annex VI

4.4.1 When a Party finds a non-compliance of a ship or a fuel oil supplier, the information of the non-compliance should be reported to the MARPOL Annex VI GISIS module (regulation 11.4).

4.4.2 Publication of information on non-compliant ships/fuel oil suppliers or a reporting scheme to IMO to be registered on centralised information platforms are proposed as elements of an effective enforcement strategy. Various PSC regimes have successfully used the publishing of information related to substandard ships/fuel suppliers as a deterrent to non-compliance.

(Author's emphasis added.)

The MEPC therefore – looking to 2020 – refocuses world enforcement on what had been the lesser-focused upon sections of Annex VI's Regulation 18.9, addressing bunker suppliers:

'Charterers want easily available, cost-competitive fuel. Owners require charterers to buy fuel that won't cause engine and fuel system problems. Under MARPOL, owners also ultimately are responsible for fuel compliance. The consequences for non-compliance are that their ships may be detained and they are fined, long after their charterers may have disappeared'

9 Parties undertake to ensure that appropriate authorities designated by them:

.1 maintain a register of local suppliers of fuel oil;

.2 require local suppliers to provide the bunker delivery note and sample as required by this regulation, certified by the fuel oil supplier that the fuel oil meets the requirements of regulations 14 and 18 of this Annex;

.3 require local suppliers to retain a copy of the bunker delivery note for at least three years for inspection and verification by the port State as necessary;

.4 take action as appropriate against fuel oil suppliers that have been found to deliver fuel oil that does not comply with that stated on the bunker delivery note;

* * *

.6 inform the Organization for transmission to Parties and Member States

of the Organization of all cases where fuel oil suppliers have failed to meet the requirements specified in regulations 14 or 18 of this Annex.

Prior to 2019, few, if any, authorities paid attention to these long-existing Regulation 18 requirements. With MEPC's 2019 refocusing on bunker suppliers, however, on top of Regulation 320(74), vessel owner organisations and the IMO's Marine Safety Committee at the MEPC 74's May 2019 session together pressed to require mandatory bunker supplier licensing. The MEPC instead (for now) is considering a voluntary licensing template⁴. Singapore, of course, has licensed bunker suppliers for years⁵ and other countries, including Jamaica, the Netherlands and Belgium, are seriously considering it.

What might prove to be a parallel to 2020 happened nearly 100 years ago.

Prohibition became United States law in January 1920, exactly 100 years before the January 2020, 0.50% marine fuel sulphur content mandate. Until 1933, under the United States' Constitution, it was illegal to produce, import, transport or sell any 'intoxicating' alcoholic beverage, in any part of the country. Physicians, however, could be licensed to write prescriptions for medicinal alcohol. They wrote a lot:

Physicians wrote an estimated 11 million prescriptions a year throughout the 1920s, and Prohibition Commissioner John F. Kramer even cited one doctor who wrote 475 prescriptions for whiskey in one day. It wasn't tough for people to write – and fill – counterfeit subscriptions at pharmacies, either. Naturally, bootleggers bought prescription forms from crooked doctors and mounted widespread scams. In 1931, 400 pharmacists and 1,000 doctors were caught in a scam where doctors

sold signed prescription forms to bootleggers. Just 12 doctors and 13 pharmacists were indicted, and the ones charged faced a one-time \$50 fine. Selling alcohol through drugstores became so much of a lucrative open secret that it's name-checked in works such as *The Great Gatsby*. Historians speculate that Charles R. Walgreen, of Walgreen's [a large pharmacy chain, still prominent in the US today] fame, expanded from 20 stores to a staggering 525 during the 1920s thanks to medicinal alcohol sales.⁶

There was another exception, for 'near beer', a legal brew containing less than 00.50% alcohol. Brewers couldn't label it 'beer' but could call it a 'cereal beverage'. Brewers sold a lot of it.⁷ Winston Churchill remarked that Prohibition was 'an affront to the whole history of mankind'.⁸

Prohibition comes to the world bunkering industry on 1 January 2020. After that date, 0.10 % sulphur fuel is like water. Any vessel may use it, anywhere. 0.50% sulphur fuel or less is 'cereal beverage'. MARPOL VI Regulations 14 and 18 allow vessels to burn it everywhere outside Emission Control Areas (ECAs), where vessels may only burn 'water' (the 0.10% fuel).

There was a third 'religious use' exception in Prohibition, not as much used as the 'prescription'. This corresponds to the use of high sulphur fuel oil (HSFO)/over 0.50% sulphur fuel (the 'intoxicating liquor') with an operating exhaust gas cleaning system (ECGS) – or 'scrubber'. However, after 1 March 2020, vessels without an ECGS may not even carry it for consumption (the 'carriage ban'), that is, without 'a prescription' – a FONAR.

During Prohibition, enforcement also focused on the producers – the 'pump'. There was a vast market, after all. Millions of people had long consumed 'intoxicating liquor' just as tens of thousands of vessels have long consumed high sulphur fuel.

The United States repealed Prohibition after widespread bootlegging, cheating and lawlessness, but the IMO won't repeal the 2020 MARPOL VI standards. Bunker buyers may want, or have to write, their own high sulphur fuel 'prescriptions': FONARS, claiming compliant 0.50% or 0.10% fuel isn't available (or that, for ECA use, 0.10% isn't available).

In smaller ports, there may not be compliant fuel available, or barges to deliver it. Some vessels may be unable to segregate compliant fuel or otherwise be assured that the new compliant fuel they take on, segregated or not, will not 'jeopardise [] the safety of ships or adversely affects the performance of the machinery' (which is a MARPOL

Annex VI Regulation 18.1.3.1.1 and 18.2.3.1, and ISO 8217⁹ requirement). Although blends are expected to meet most 0.50% requirements, it is uncertain whether some blends will be compatible with others. Major refiners offer patented blends assuring MARPOL Annex VI Regulation 18 and ISO 8217 quality and compatibility. Some ports may be without the patented blends that a vessel has used safely and with good machinery performance.

The profusion of blends may also lead to more quality disputes, especially as blenders attempt to blend without infringing patents, or introduce new cutter stocks (particularly, to achieve a lower priced 0.50% blend). For the first time, bunker buyers must move from a focus only on buying, to bunker management: starting with the vessel's trade route and determining (working with suppliers) well in advance where the vessel can load needed (and compliant) fuel.¹⁰

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A further factor in the challenge of post-2020 compliant fuel availability is the frequent, fuel-related tension between owners and the charterers they require to purchase fuel, which the charter specifies, which should not damage a ship or draw enforcement actions.

Charterers want easily available, cost-competitive fuel. Owners require charterers to buy fuel that won't cause engine and fuel system problems. Under MARPOL, owners also ultimately are responsible for fuel compliance. The consequences for non-compliance are that their ships may be detained and they are fined, long after their charterers may have disappeared.

Consequently, many charter parties will likely contain, in addition to fuel performance

and content specifications, some version of the BIMCO 2020 Marine Fuel Sulphur Content Clause for Time Charter Parties, providing:

- (a) For the purpose of this Clause, "Sulphur Content Requirements" means any sulphur content and related requirements as stipulated in MARPOL Annex VI (as amended from time to time) and/or by any other applicable lawful authority.
- (b) The Charterers shall supply fuels to permit the Vessel, at all times, to comply with any applicable Sulphur Content Requirements. All such fuels shall meet the specifications and grades set out in this Charter Party.

* * *

The Charterers also warrant that any bunker suppliers, bunker craft operators and bunker surveyors used by the Charterers shall comply with the Sulphur Content Requirements. The Charterers shall indemnify, protect, defend and hold harmless the Owners from any and against all losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Charterers' failure to comply with this subclause (b), and the Vessel shall remain on hire throughout.

- (c) The Owners warrant that the Vessel shall comply with the Sulphur Content Requirements. Subject to the Charterers having supplied the Vessel with fuels in accordance with subclause (b), the Charterers shall not otherwise be liable for any losses, damages, liabilities, delays, deviations, claims, fines, costs, expenses, actions, proceedings, suits, demands arising out of the Owners' failure to comply with this subclause (c).

Consequently, charterers face liability from owners, if they don't comply with 'Sulphur Content Requirements'. Will charterers meet 'Requirements' by submitting a FONAR?

Overshadowing all of these factors post-2020 will be price. Most predictions are for the price of 0.50% compliant fuel to increase, because of demand, at least \$250 per metric tonne (p/mt) (from an already relatively high \$450 p/mt) into 2020, with the 0.10% fuel price (MGO, which typically costs now more than \$200 p/mt more than 0.50% fuel) to increase a similar \$250 p/mt.

At the same time, predictions are that the 3.50% HSFO residual fuel price, now at least \$100 p/mt less than 0.50% may

decrease a further \$100 p/mt or more. Consequently, those burning 3.50% HSFO residual, at least for the first half of 2020, may save \$400 p/mt or more over using 0.50% and \$600 p/mt or more using 0.10%.

Before 2016, the IMO also had imposed successive restrictions on marine fuel sulphur content. The MARPOL ECA restriction effective 1 January 2010 was to 0.10% maximum sulphur content fuel, reduced from 1.50%. Even with that 0.50% reduction, however, over two years later, for vessels entering the North America ECA alone in just three months of 2012 (August-October), US authorities received 483 FONARS, or 2% to 4% of vessels arriving in the United States reporting non-availability of 1% fuel.¹² From 1 January 2015, MARPOL required a further 0.50% reduction in ECAs to 1.00% maximum. In contrast to the 2012 experience, US authorities received just 88 FONARS in January 2015, dropping to seven to ten monthly afterwards. However, 2015 world fuel prices were historically low,¹³ about 50% of the price of 2012 fuel.¹⁴

Although there were some exceptions, most suppliers around the world had enough 0.10% distillate available to meet the 1 January 2015 ECA requirements. ECAs, however, include only a small fraction of the world's oceans, so vessels' demand for 0.10% fuel was then and remains – until 1 January 2020 – relatively small. Consequently, the 1 January 2015 experience with 0.10% distillates, with only the ECA demand for those, will not necessarily be representative of the post IMO 2020 demand. That is, the demand for 0.10% for ECAs will continue, but adding to that will be demand for 0.10% where it is 'available' and compliant 0.50% is 'non-available'.

Price is not a justification for a FONAR. If 0.10% is available, then, a vessel must, all other things being equal, buy it. But, under MARPOL Annex VI Regulation 18, all other things aren't necessarily equal.

For example, a significant opening is Regulation 18.2.2, stating that "[t]he ship should not be required to deviate from its intended voyage or to delay unduly the voyage in order to achieve compliance." What is 'required' or 'unduly'? Does that mean that because of demands at the load port, if a barge load of HSFO is available immediately, but the vessel must wait for 0.50%, then the vessel may load HSFO? Does that mean that although a small supplier on the opposite side of the port, where the vessel is loading cargo, has stores of 0.10%, the vessel need not add time to its voyage by proceeding to the small supplier's loading pier?

What also if, with 0.50% not available, the vessel engineer argues that prolonged

burning of the 0.10% available might damage the vessel's machinery or be unsafe for use on a sustained basis (e.g., longer than passage through an ECA) – because of the 0.10%'s low sulphur (and low lubricity and flash point) characteristics? Or, what if the testing lab pre-tests the 0.50% blend available and determines that the vessel can't use it because it will also damage machinery or be incompatible with the blend already in vessel tanks?

Regulation 18 (and ISO 8217) again does not require vessels to take any fuels, whatever its sulphur content, that 'jeopardises the safety of the ship or adversely affects the performance of the machinery'. Vessels have different propulsion and fuel treatment systems; some (as the 2018 Houston/Panama/Singapore fuel quality situation showed) can consume fuels without problem, which fuels instead caused serious, and expensive engine damage and filter clogging on others. What marine fuel also is never 'harmful to personnel' or does not 'contribute to overall air pollution',

4 In case of fuel oil supply disruption only

4.1 Name of port at which ship was scheduled to receive compliant fuel oil:

4.2 Name, email address, and phone number of the fuel oil supplier that was scheduled to deliver (and now reporting the non-availability):

5 Operation constraints, if applicable

5.1 If non-compliant fuel has been bunkered due to concerns that the quality of the compliant fuel available would cause operational or safety problems on board the ships, the concerns should be thoroughly documented.

5.2 Describe any operational constraints that prevented use of compliant fuel oil available at port:

5.3 Specify steps taken, or to be taken, to resolve these operational constraints that will enable compliant fuel use:

6 Plans to obtain compliant fuel oil

'Price is not a justification for a FONAR. If 0.10% is available, then, a vessel must, all other things being equal, buy it. But, under MARPOL Annex VI Regulation 18, all other things aren't necessarily equal'

which are two other requirements of a compliant fuel under Regulation 18/ISO 8217?

If they don't (to their peril) simply invent the required FONAR information about non-availability, bunker buyers using MEPC Regulation 320(74)'s FONAR form will have to obtain much information from bunker suppliers – and be dependent on them for accurate information. The MEPC FONAR form requires the following bunker supplier-related information:

3 Evidence of attempts to purchase compliant fuel oil

3.1 Provide a description of actions taken to attempt to achieve compliance prior to entering "country X" waters (and ECA, if applicable), including a description of all attempts that were made to locate alternative sources of compliant fuel oil, and a description of the reason why compliant fuel oil was not available:

3.2 Name and email address of suppliers contacted, address and phone number and date of contact (dd-mm-yyyy):

Please attach copies of communication with suppliers (e.g. emails to and from suppliers)

6.1 Describe availability of compliant fuel oil at the first port-of-call in "country X", and plans to obtain it:

6.2 If compliant fuel oil is not available at the first port-of-call in "country X", list the lowest sulphur content of available fuel oil(s) or the lowest sulphur content of available fuel oil at the next port-of-call:

Consequently, customers will be depending significantly on bunker suppliers to provide them with accurate, timely, thorough information to report on FONARS.

But, it is also clear from the above and the wide berths that Regulation 18 gives for vessel schedule, and fuel that must not damage machinery or adversely affect performance, that, combined with the significant gap likely between HSFO, 0.50% and 0.10% prices, there may be great incentives for customers, or bunker suppliers, to game the FONAR system. After all, all things being equal, a bunker supplier might be able to sell extra HSFO for a higher price to a buyer if somehow, through a strict (and/or convenient) application of Regulation 18's terms, the more

expensive 0.10% or 0.50% was not 'available'.

A more likely (hopefully) scenario, however, is that instead of a contrived 'non-availability', compliant fuel, either 0.10% or 0.50%, is non-available because of a shortage, or barge break-down, or even contamination of the local supply. Or, it could be that even though a vessel has planned its voyage and contacted suppliers (directly or through brokers or traders) about its expected needs, it has burned more bunkers than expected and requires resupply in an un-planned port.

Generally, in any situation where there may be a FONAR, bunker suppliers must be prepared to provide reliable (and truthful) documentation about availability, and certainly keep that documentation. With the new FONAR requirements, bunker suppliers should introduce new systems to record when they have answered inquiries that a compliant fuel is non-available, and keep records on that. Situations may arise, for example, where a supplier finds itself listed on a FONAR reporting non-availability, where it had fuel available; it needs to be able to show authorities that it in fact had available fuel. Or, customers which do have true non-availability situations will need their suppliers' (and traders' and brokers') support to show, that fuel really was non-available.

One of the factors important to an authority considering a FONAR, for example, may be 'evidence showing whether the vessel owner or operator has taken all reasonable steps to ensure compliant bunkers will be available in the planned bunkering port.'¹⁵ A trader or broker may provide the customer with considerable assistance with this evidence, given that the trader or broker should be familiar not only with the ports the customer intends to call but the bunker availability situations in them.

Traders' and brokers' roles relating to the new FONAR requirements will be particularly important. They will be even more involved in voyage planning along with customers, and obtaining and keeping the information (because they rather than customers deal directly with suppliers) about availability, and non-availability that the MEPC's FONAR form requires.

An important point to remember also is that a port or flag State authority does not have to accept even the most well-documented FONAR. That is, a vessel arriving with non-compliant fuel still might be required to de-bunker where compliant fuel is available. So, if a bunker supplier determines that it can sell non-compliant fuel, it must well-document this, because a customer forced to de-bunker will face considerable delays and expense. Especially if the vessel

has arrived at the end of its charter party, the owner may turn back to the supplier, seeking to put the delay and de-bunkering expense back on the supplier, showing that compliant fuel was, in fact, available.

Bunker suppliers particularly must keep in mind the Bunker Delivery Note (BDN) requirements effective 1 January 2019 – and – the new MEPC focus on enforcement against bunker suppliers providing inaccurate BDNs. Each BDN must now contain:¹⁶

A declaration signed and certified by the fuel oil supplier's representative that the fuel oil supplied is in conformity with Regulation 18.3 of this Annex and that the sulphur content of the fuel oil supplied does not exceed:

'Regulation 18.2.2,
states that "[t]he
ship should not be
required to deviate
from its intended
voyage or to delay
unduly the voyage
in order to achieve
compliance.'" What
is "required" or
"unduly"?'

- the [0.50%] limit value given by regulation 14.1 of [MARPOL Annex VI];
- the [0.10%] limit value given by regulation 14.4 of this Annex; or
- the purchaser's specified limit value of (% m/m), as completed by the fuel oil supplier's representative and on the basis of purchaser's notification that the fuel oil is intended to be used:

.1 in combination with an equivalent means [ECGS/scrubber] of compliance in accordance with regulation 4 of this Annex; or

.2 is subject to a relevant exemption for a ship to conduct trials for sulphur oxides emission reduction and control technology research in accordance with regulation 3.2 of this Annex.

This declaration shall be completed by the fuel oil supplier's representative by marking the applicable box(es) with a cross (x). (Author's emphasis added.)

In many countries, certification takes

on legal significance, that is, false certification leads to prosecution. Note that the BDN requirements refer only to Regulation 18.3 (with its machinery and vessel operations exceptions) but not to 18.2 (with its delay exception or providing generally for a FONAR). MARPOL Annex VI, Regulations 18.5 and .6 require that there be a BDN with every bunker delivery, and as of 1 January 2019 with the above 'certifications'. But, if there is non-availability only under Regulation 18.2, apparently, the bunker supplier cannot, truthfully, certify (or issue, because certification is required) the BDN. This is a situation, arising since 1 January 2019 (four years after the 0.10% ECA requirements), which apparently was not one considered (at least in reported MEPC documents) along with the FONAR requirements and responsibility (and liability) of bunker suppliers.

Consequently, again, because of the certification that bunkers suppliers must provide on BDNs, they must be very cautious about confirming non-availability and, on that basis, giving a customer a basis to issue a FONAR. That is because, even though the FONAR may be correct, in some instances the certified BDN will not be, or the BDN cannot be certified (and thus is incomplete under Regulations 18.5 and .6, and their Appendix).

No supplier, or trader or broker also should expect that if their customer submits a FONAR, the authorities will not return to the trader or broker – and then also to the suppliers reporting non-availability – to confirm that the report is truthful. If the authority believes that the report is untruthful, the trader, broker and suppliers should expect, given the re-focus on bunker suppliers pre-2020, to face enforcement action.

Traders, brokers and suppliers may face the same inquiry (and liability) from an owner, where there has been otherwise non-compliant fuel sold to a charterer. This may be either where the owner questions a FONAR (even though no authority has questioned it), or where the owner faces liability from an authority because the owner's vessel has arrived with non-compliant fuel and an insufficient FONAR.

MEPC 21 May 2019 (MEPC.1/Circ.884) published its 'Guidance for Best Practice for Member State/Coastal State', also focusing on bunker suppliers.¹⁷ Although not MARPOL Annex VI regulation, this 'Guidance' provides bunker suppliers (and traders and brokers) with further confirmation about how enforcement, into 2020 and beyond, will focus more on bunker suppliers. To Regulation 18.1, the MEPC states '[b]est practice/experience on how to promote availability of compliant fuel oil' as follows:

.1 Member States/coastal States should promote the availability of fuel oils which comply with MARPOL Annex VI and require suppliers under their jurisdiction to provide fuel oils that comply with the requirements of regulation 14 and regulation 18.3 of MARPOL Annex VI;

.2 any measures to promote the availability of fuel oils in ports should not lead to distortion of competition. It should be left to individual fuel oil suppliers to make investment decisions based on the market opportunities they see...

In other words, the MEPC now encourages governments to be involved with fuel availability, although subject to 'market opportunities'. 'Market opportunities', of course, has different meanings depending on the governments involved. Generally, however, there certainly are market opportunities considering FONAR requirements: a supplier with expensive 0.10% available can in some instances require a customer (which might be a new customer) to buy the more expensive 0.10%, simply because the bunker supplier has that available where the supplier's local competitors may not have the required 0.50%.

Writing on Regulation 18.3 ('Fuel oil quality'), however, the MEPC's 'best practices' state the following:

.1 ...In cases where it is documented that the fuel delivered does not comply with those qualitative requirements of [Regulation 18.3] the port State/coastal State should take action against the supplier...

On Regulation 18.9, 'best practices' are:

.1 Member States/coastal States and the maintaining of a register of local suppliers of fuel oil: [including]

.2 A copy of 'standard' bunker delivery note from the supplier (voluntary as there is no requirement for suppliers to submit a "standard" bunker delivery note to the authority); and

.3 Information if supplier has a Quality Management system (voluntary, based on suppliers own information, reference to supplier's homepage).

...visit barges and terminals and check that the supplier provides a bunker delivery note and a MARPOL delivered sample...

...implement provisions in their national regulation that enables them to address situations where suppliers are found to deliver fuel oil that does not comply with the associated bunker delivery note,

...take action as appropriate against fuel oil suppliers that have been proven to deliver fuel oil that does not comply with that stated on the bunker delivery note,

...inform the Organization of all cases where fuel oil suppliers have failed to meet the requirements specified in regulation 14 or 18 of MARPOL Annex VI [; and]”

...Member States or other relevant authorities desiring to do so may decide to establish or promote a licensing scheme for bunker suppliers.

New York Times reporter Ian Urbina writes in his series, *The Outlaw Ocean*, that:

‘An important point to remember also is that a port or flag State authority does not have to accept even the most well-documented FONAR. That is, a vessel arriving with non-compliant fuel still might be required to de-bunker where compliant fuel is available’

Few places on the planet are as lawless as the high seas, where egregious crimes are routinely committed with impunity. Though the global economy is ever more dependent on a fleet of more than four million fishing and small cargo vessels and 100,000 large merchant ships that haul about 90% of the world's goods, today's maritime laws have hardly more teeth than they did centuries ago when history's great empires first explored the oceans' farthest reaches.¹⁸

He continues in his 2019 book of the same name,¹⁹ that:

I'd go a step further: the ocean is outlaw not because it is inherently good or bad

but because it is a void, like silence is to sound or boredom is to activity. While we have for centuries embraced and touted the life that springs from these waters, we have tended to ignore its role as a refuge of depravity. But the outlaw ocean is real, as it has been for centuries, and until we reckon with that fact, we can forget about ever taming or protecting this frontier.

Which is the best way to stop the epidemic of ocean air pollution by tens of thousands of vessels? Now that 'Prohibition' arrives on 1 January 2020, how will authorities enforce it?

It won't ultimately be about chasing tens of thousands of vessels across the 'Outlaw Ocean'. The IMO's MEPC, with MARPOL Annex VI amendments that IMO has confirmed and will confirm, implemented by port and flag States, will as the MEPC's 2019 focus on bunker suppliers shows, look increasingly to the 'pump' and make sure that any 'prescriptions' have properly been written.

Bunker suppliers, traders and brokers therefore now must be FONAR: Fully On Notice About Requirements.

1 Text at <http://www.imo.org/en/OurWork/Environment/PollutionPrevention/Documents/Resolution%20MEPC.320%2874%29.pdf>. This document includes the MEPC's Fuel Oil Non-Availability Report (FONAR) form.

2 The current Revised MARPOL Annex VI Regulations for the Prevention of Air Pollution from Ships, including Regulation 18, are at [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-\(MEPC\)/Documents/MEPC.176\(58\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-(MEPC)/Documents/MEPC.176(58).pdf).

3 *New Procedure for Shipping Industry to Notify the U.S. Government of Non Available Fuel Oil*, US Coast Guard, Marine Safety Information Bulletin 0005-19, 28 June, 2019, https://www.dco.uscg.mil/Portals/9/DCO%20Documents/5p/MSIB/2019/MSIB_005_19.pdf.

4 *IMO considers licensing scheme for bunker suppliers*, IBIA 5th May, 2019, <https://ibia.net/imo-considers-licensing-scheme-for-bunker-suppliers>.

5 Regulation 64(b) of the Maritime and Port Authority of Singapore (Port) Regulations, and Singapore Standard Code of Practice for Bunkering – SS 600 (2014), from <http://www.mpa.gov.sg/web/portal/home/port-of-singapore/port-operations/bunkering/bunkering-standards/singapore-standard-code-of-practice-for-bunkering-ss600>.

6 Paula Mejia, *The Lucrative Business of Prescribing Booze During Prohibition*, *Gastro Obscura*, 2017, <https://www.atlasobscura.com/articles/doctors-booze-notes-prohibition>.

7 Nick Greene, *How Breweries Kept Busy During Prohibition*, *Mentalfloss*, Feb. 20, 2014, <http://mentalfloss.com/article/55157/how-breweries-kept-busy-during-prohibition>.

8 *How Winston Churchill Drove Us To Drink*, *The Daily Beast*, 6 November, 2017, <https://www.thedailybeast.com/how-winston-churchill-drove-us-to-drink>.

9 ISO 8217 (whether 2010 - 2102 or 2017) – "Petroleum products – Fuels (class F) – Specifications of marine fuels" – 5 General Requirements" also states in pertinent part:

5.5 The fuel shall not contain any additive at the concentration used in the fuel, or any added

substance or chemical waste that jeopardises the safety of the ship or adversely affects the performance of the machinery; or is harmful to personnel; or contributes overall to additional air pollution.

10 For a comprehensive discussion of the factors affecting fuel availability post-2020, see *IMO 2020: The Last Leg of the Journey*, 5 June 2019, Report of The ExxonMobil & Bunkerspot Roundtable at Nor-Shipping 2019.

11 Copyright BIMCO, 2019, text at https://www.bimco.org/contracts-and-clauses/bimco-clauses/2020-Marine_Fuel_Sulphur_Content_Clause_for_Time_Charter_Parties.

12 US Environmental Protection Agency (EPA), *Presentation, U.S. Emission Control Areas, Briefing for the Mobile Source Technical Review Subcommittee*, Washington, DC, December 13, 2012, Table, Preliminary Data: Number of FONARS Received, August – October, 2012, <https://www.epa.gov/sites/production/files/2014-09/documents/charmley.pdf>.

13 Hand, Marcus, *Are the US and Canada leading the enforcement of ECA regulations?*, SeaTrade Maritime News, 24 July, 2015, <https://www.seatrade-maritime.com/news/americas/are-the-us-and-canada-leading-the-enforcement-of-eca-regulations>.

Significantly, world reporting on FONAR submission has been irregular. Although the IMO maintains an on-line system for Member States' reporting, the Global Integrated Shipping Information System (GISIS), reporting on MARPOL VI, at <https://gisis.imo.org/Public/MARPOL6/Default.aspx>. There have been only 137 reports of FONARS filed since 2014, none by the United States. See GISIS, IMO, "Regulation 18.2.5 Evidence of non-availability of compliant fuel oil," <https://gisis.imo.org/Public/MARPOL6/Notifications.aspx?Reg=18.2.5>. The US has not regularly reported FONAR submissions, since 2015.

The International Bunker Industry Association (IBIA), following 2018's IMO October Marine Environment Protection Committee (MEPC) 73 and December 100th IMO Maritime Safety Committee meetings, pointed out these deficiencies and urged more rigour for the GSIS System. Most IMO Members, including the United States, have not responded accordingly. See IBIA Report, 28th May, 2019 at <https://ibia.net/imo-in-bid-to-improve-reporting-on-fuel-oil-quality-and-availability>.

14 See US Energy Information Administration, US No. 2 Diesel Prices, 1996-2018, https://www.eia.gov/dnav/pet/hist/LeafHandler.ashx?n=PET&s=EMD_EPD2D_PTE_NUS_DPG&f=A.

15 For considerations, generally focused on buyers, concerning the decision to load non-compliant fuel and issuing FONARS, see International Chamber of Shipping (ICS) [developed in collaboration with IBIA], *Guidance to Shipping Companies and Crews on Preparing for Compliance with the 2020 'Global Sulphur Cap' for Ships' Fuel Oil in Accordance with MARPOL Annex VI – Updated 1 July 2019*, <https://www.ics-shipping.org/docs/default-source/resources/guidance-for-compliance-with-the-2020-global-sulphur-cap-july-2019.pdf?sfvrsn=24&sfvrsn=24>.


16 IMO, Resolution MEPC.286(71) (adopted on 7 July 2017) [http://www.imo.org/en/Knowledge-Centre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-\(MEPC\)/Documents/MEPC.286\(71\).pdf](http://www.imo.org/en/Knowledge-Centre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-(MEPC)/Documents/MEPC.286(71).pdf).

17 Copy at <https://www.mardep.gov.hk/en/msnote/pdf/msin1917anx4.pdf>.

18 Ian Urbina, *The Outlaw Ocean, Stowaways and Crimes Aboard a Scofflaw Ship*, 17 July, 2015, The New York Times, at <https://www.nytimes.com/2015/07/19/world/stowaway-crime-scofflaw-ship.html>.

19 See <http://www.TheOutlawOcean.com>, Ian Urbina, *The Outlaw Ocean 287* (2019, Kindle Edition). The

author of this article highly recommends this book to readers – in addition to the MEPC and MARPOL VI documents this article addresses.

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After successfully starting up in Zeebrugge, we are proud to report that we are adding a newbuild barge to supply Zeebrugge in the coming year.

With 2020 in sight we started preparing our fleet and have completed our first deliveries of 0.5% Fuel.

Furthermore we will continue supplying all ARA ports to provide service that meets the needs of all our clients.



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