

Port States to form backbone of sulphur cap compliance

London, 2 November (Argus) — Vessels that are non-compliant with upcoming marine sulphur regulations could face detentions by Port State Control (PSC) authorities, with repeat offenders at risk of being banned and refused access to ports.

Such vessels are unlikely to be able to flout the rules beyond the short term following the implementation date for the sulphur cap.

The International Maritime Organisation (IMO) ruled last year that sulphur pollution from vessels must be limited to 0.5pc by mass from 2020, but there have been concerns about whether vessels will comply.

Ships that are flagged to a country that has not signed or ratified the relevant IMO legislation have been a particular concern, as they are not obliged by their flag state to abide by the sulphur cap in international waters.

The flag state is effectively the only authority with powers of enforcement for non-compliance in international waters.

Concern has also been raised over flag states that have signed or ratified the legislation but take a laxer approach to monitoring compliance and enforcement.

Toby Royal, a partner in the Maritime Group at international law firm Watson Farley & Williams, told *Argus* that even if a vessel is flagged to a state that has not ratified the protocol, it will likely be trading to a jurisdiction that has.

"If an owner or operator wants to continue having access to that market" he said, "it will need to ensure that its vessel is compliant with the rules of that jurisdiction as these will apply to that vessel on her entering national waters".

Around 90pc of global marine trade passes through countries that are signatories to the relevant IMO legislation, according to the International Bunker Industry Association (IBIA).

"PSC authorities will want to check that not only is the vessel compliant with the requirements of its own flag, but that the vessel is compliant with the rules and regulations of that PSC authority. If the PSC authority has adopted additional international rules and regulations, it will expect arriving ships to be in compliance with those".

A vessel found to be non-compliant with PSC regulations runs the risk of detention with remedial steps being required before being released. Continued non-compliance could lead to that vessel being banned for a certain time from ports within the jurisdiction of that PSC and even a wider area.

With a view to streamlining inspection regimes, regional cooperation systems called Memoranda of Understanding on Port State Control (MOUs) were introduced in the 1980s.

They are designed to reduce the need for duplicate inspections being carried out by PSC authorities.

There are nine MOUs documenting agreements on port state control for their particular region, resulting in an increased risk of vessels being caught and sanctioned for non-compliance.

Some MOUs categorise flag states as either 'white', 'grey' or 'black', depending on the number of deficiencies and detentions that are recorded against ships registered under that flag.

A vessel flagged to a 'grey' or 'black' state will be subjected to a higher level of scrutiny across the MOU area.

A number of states are also increasingly sharing information about vessels through an agreement signed in 2015 between Brazil, Canada, France, Japan, Norway, South Korea, Spain, the UK, the US, and the European Maritime Safety Agency.

"Where you have repeat offenders in one area, authorities are increasingly warning each other about such vessels and sharing information on inspections and detentions," Royal told *Argus*.

The more detentions a vessel has, the more chances it has of being banned across a number of ports and, potentially, countries for a certain period, preventing it from generating revenue.

Flag states also have an interest in ensuring vessels registered to them are compliant with the sulphur cap, although a more relaxed attitude to compliance enforcement could act as an incentive for some owners to switch flag.

In order to attract reputable shipowners, quality flag states will abide by international maritime rules. Similarly, quality shipowners are keen to be flagged to states with a good reputation. This can smooth the path not only for international trading but also to securing finance and obtaining more competitively priced insurance.

If vessels are found to be repeatedly non-compliant, this could damage the reputation of the flag state to which they are registered.

Over time, this could see a flag state move from a 'white' to a 'grey' or 'black' list classification within an MOU area.

If an owner was looking to re-register a vessel to a flag state that had not ratified the IMO legislation, this would likely result in having to switch to a lower quality flag state, which could affect the areas that the vessel could trade.