



Report No: **69/2010**

Public Agenda Item: **Yes**

Title: **Consultation on the Draft Merchant Shipping (Ship-to-Ship Transfer) Regulations 2010**

Wards Affected: **All Wards in Torbay**

To: **Harbour Committee**

On: **15 March 2010**

Key Decision: **No**

Change to Budget: **No**

Change to Policy Framework: **No**

Contact Officer: **Capt. Kevin Mowat**

Telephone: **01803 292429**

E.mail: **Kevin.Mowat@torbay.gov.uk**

1. What we are trying to achieve and the impact on our customers

- 1.1 The Maritime and Coastguard Agency (MCA) has launched a consultation on draft Regulations that will help prevent pollution from ships engaged in ship-to-ship transfers of oil.
- 1.2 This report seeks to raise the debate with the Harbour Committee and to agree a means of responding to the consultation.
- 1.3 Tor Bay Harbour is not normally used for ship-to-ship transfers but bunkering operations are permitted on rare occasions. In previous years large volumes of oil cargo have been transferred from ship to ship in Lyme Bay. Given the close proximity of such activity to the Bay and the significant impact an oil spill can have on our environment, economy and local communities, it is important that the Harbour Authority sends a response to this consultation.

2. Recommendation(s) for decision

- 2.1 **That, the Executive Head of Harbour and Marine Services, in consultation with the Chairman of the Harbour Committee, respond to the consultation on the draft Merchant Shipping (Ship-to-Ship Transfer) Regulations 2010.**

3. Key points and reasons for recommendations

- 3.1 On 8th February 2010 the MCA launched its consultation on the draft Merchant Shipping (Ship-to-Ship Transfer) Regulations 2010.

3.2 The problem under consideration is how to prevent pollution from ships engaged in ship-to-ship transfers. Government intervention is required because cargo transfers, consisting wholly or partially of oil, and bunkering operations between ships at sea are currently unregulated in the UK. There is no statutory requirement for parties engaged in such transfers at sea to notify the UK authorities or have the necessary resources in place should a pollution incident occur. At present, there are no powers in place to prevent such operations taking place. The introduction of the proposed regulations would seek to bring these transfers within statutory harbour areas, where there already exists a statutory responsibility to have oil pollution contingency plans in place, thus reducing the risk and impacts of any potential spills.

3.3 The policy objectives of the MCA are :-

- § To regulate cargo transfers, consisting wholly or partially of oil, and bunkering operations between ships within the UK 12 nautical mile territorial sea.
- § To ensure that the impact of cargo transfers upon any European Sites under the Habitats Directive is considered and minimised, and ensure that oil transfers are recorded and monitored through a system of environmental consents to be issued by an appropriate authority; and to enable the UK to take action against unauthorised ship to ship transfers.
- § The intended effect is to ensure that the UK would have the ability to prevent ship to ship transfers within the 12 nautical mile limit if they are considered a risk to the environment, economy or local communities. The UK would also have the ability to prosecute those that carry out unauthorised transfers or do not carry out transfers within the terms permitted by the licence.

3.4 Applying Ship-to-Ship Transfer Regulations will help contribute towards the shared objective of 'making people feel safe', contained within the Community Plan, Torbay Council's Corporate Plan and the Tor Bay Harbour Business Plan.

For more detailed information on this proposal please refer to the supporting information attached.

**Captain Kevin Mowat
Executive Head of Harbour and Marine Services
Tor Bay Harbour Master**

Supporting information to Report **xx**/2010

A1. Introduction and history

- A1.1 Cargo transfers between ships (referred to as Ship-to-Ship (STS) Transfers) involve the transfer of oil, carried as cargo, from one tanker to another. It is an internationally recognised practice, which takes place worldwide. There are voluntary industry guidelines issued under the aegis of the International Chamber of Shipping (ICS) and the Oil Companies International Marine Forum (OCIMF), which set out the procedures to be followed when carrying out cargo transfers. Domestically, these transfer operations have a very good record, both in respect of safety and in respect of the environment.
- A1.2 Refuelling operations between ships (normally referred to as bunkering) involves the replenishment of bunker fuel for use by a ship receiving the transfer for propulsion of the engines. This can be considered as a lesser form of ship to ship transfer with usually much smaller volumes being transferred.
- A1.3 Routine cargo and bunkering transfers between ships are currently unregulated and ships can conduct transfers anywhere in the UK waters.

Current situation for Cargo Transfers (STS Transfers)

- A1.4 Historically, STS transfers have been carried out in the UK territorial seas in locations off Southwold (Suffolk) and in Lyme Bay (Devon/Dorset), as well as in the Harbour Authority areas of Scapa Flow, Nigg and Sullom Voe. In recent years, there has been an increase in STS transfers in UK waters, brought about by new trading patterns within Europe and Russia, namely the noted increase in trade through European waters of Russian export blend crude oil and heavy fuel oil.
- A1.5 The specific reason for the requirement to carry out the transfers is that the oil emanating from Baltic and Russian ports initially has to be shipped using relatively small tankers due to the shallow waters of the Baltic Sea and some of the approaches to the Northern Maritime Corridor ports. However, once this stage of the journey has been negotiated it is then more economically viable to transfer the oil into larger tankers for the onward journey to its eventual destination in either the Americas or the Far East. MCA data indicates that transfer operations tend to involve transfer of oil from a number of smaller vessels (around 2-6) into one larger vessel.
- A1.6 MCA records show that from 2006 to 2008, less than 60 applications to complete ship to ship transfers were received by the MCA. However, the MCA had in excess of 200 applications in 2009. The operations have involved a total of 594 ship movements (this includes all receiving and discharging vessels). This substantial increase is mainly due to the current economic downturn as it is more profitable for companies to hold the product on the vessels until such time as the oil price peaks before transferring it to the receiving vessel for onward transit to the intended market. Ships are being repeatedly used as storage receptacles with the subsequent change in trading patterns. Some of these storage ships can be seen anchored off Tor Bay Harbour.
- A1.7 Cargo transfer operations are undertaken by manoeuvring two vessels to berth together. Pipelines are then connected between the vessels and the cargo transferred from one vessel to the other. If more than one vessel is involved in

discharging oil then the first vessel will uncouple and move away before the process is repeated with the next discharging vessel. The number of vessels involved can vary from 2 (one discharging and one receiving) to 6 (one or two receiving and up to 5 discharging). Each transfer operation is independent and the MCA cannot predict the number of vessels that may be involved overall. Under the proposed Regulations, the MCA expect that this operation would instead take place within the sheltered confines of harbour waters using similar methodology. The alternative would be for these operations to take place outside UK territorial waters.

Current Situation for Bunkering Transfers (Bunkering)

- A1.8 The majority of ports have the necessary facilities for bunkering transfers to be carried out within their statutory harbour areas resulting in the majority of all bunkering transfers being carried out within these harbour areas.
- A1.9 However, bunkering can take place outside of harbour areas. When this occurs, as with ship to ship transfers, there is no regulation currently in place to control the operation or impose sanctions should an incident occur.
- A1.10 No statistics exist as to the number of bunkering operations that currently take place within UK harbour areas as these are often a daily operational occurrence. Of the 248 ship to ship transfer applications that were received during 2009, 23 were identified as bunkering operations.

Regulatory Background

- A1.11 One of the recommendations in the report 'Safer Ships, Cleaner Seas' overseen by Lord Donaldson of Lymington following the Braer incident, was that the Government should bring new Regulations into force as soon as practicable to control transshipments, such as cargo transfer and bunkering transfer operations.

The OPRC Regulations

- A1.12 All statutory harbour areas must comply with the International Convention on Oil Pollution Preparedness, Response and Co-operation Convention (OPRC) 1990 and the associated domestic legislation under the Merchant Shipping (OPRC) Regulations 1998. Tor Bay Harbour is compliant in this respect.
- A1.13 The OPRC Regulations require ports and harbours to have a MCA approved oil spill contingency plan which includes a risk assessment and the provision of oil combating equipment commensurate to the identified risk. The plans are designed to ensure that trained personnel and the necessary equipment for responding to a spill are close at hand, and can be deployed in a timely manner. Were cargo transfers or bunkering transfers to be carried out in a statutory harbour area, the port / harbour would be required to give this due consideration as part of its oil spill contingency plan.
- A1.14 The OPRC Regulations do not apply to cargo or bunkering transfer operations which take place outside of statutory harbour areas. As a result, there are currently no statutory requirements placed on operators to have in place the necessary resources to respond to a pollution incident arising from their operations if they take place outside of statutory harbour areas. This means it would fall upon the government to initiate a response to an incident and use taxpayers money to undertake the clean up operation. It is also possible that

those involved in the incident would not notify the authorities resulting in a delayed reaction and greater damage occurring to the marine and coastal environments as a result. If operations are carried within a port area there are more and better resources available to respond to an incident to mitigate and pollution.

The Habitats Directive

- A1.15 European Council Directive 92/43/EEC on the Conservation of Natural Habitats and of Wild Flora (The Habitats Directive) has the aim of preserving, protecting and improving the quality of the environment, including the conservation of natural habitats and of wild fauna and flora.
- A1.16 The proposed Merchant Shipping (Ship-to-Ship Transfer) Regulations, would implement the Habitats Directive in respect of the granting of oil transfer licences. When applying for an oil transfer licence the Harbour Authority would be required to consider whether the transfer operation(s) proposed under the licence would constitute a significant threat or have a significant effect on any European designated conservation site. They would have to show that this has been taken into consideration prior to an Oil Transfer Licence being awarded.

A2. Why Intervention is required

- A2.1 The problem under consideration is how to prevent pollution from ships engaged in ship-to-ship transfers. New trading patterns in Europe and Russia, associated with growing markets for Russian export blend crude oil, have meant an increased number of cargo transfers occurring in UK waters in recent years, with further growth expected. MCA statistics show that since 2006 the number of ship-to-ship transfers taking place in UK waters has greatly increased (see paragraph A1.6). This has led to a proportional increase in the risk to the UK from a major oil pollution incident arising as a result of a cargo transfer. The MCA has recorded 6 incidents of collisions and 2 incidents of oil spills during ship-to-ship transfers during 2009. The UK has been fortunate that these incidents have been minor. The sudden recent increase in ship-to-ship operations is linked to the economic downturn as explained in paragraph A1.6. There are no current trends indicating a downturn in this activity.
- A2.2 Although the UK has successfully controlled ship-to-ship transfers in UK waters through voluntary measures and guidelines for a number of years, and industry has effectively self regulated, the increase in operations and incidents has led to the need for the UK to further protect its coastline and waters from oil pollution incidents. The introduction of the proposed Regulations would ensure that all transfers within the UK's 12 nautical mile territorial sea limit take place within harbour areas where additional resources are available to combat any pollution incidents that may occur.
- A2.3 The proposed Regulations would ensure that no unauthorised transfers take place and would be an effective tool to prevent the 'rogue' operators that can currently carry out transfers, and operate outside of the voluntary guidelines, within UK waters without fear of sanctions. Although the MCA know that operations have been undertaken without the MCA being notified, no records of such operations are kept. When such a situation occurs, communication is undertaken with the operator to ensure they are informed of the MCA process for ship to ship transfers.

- A2.4 The Government has maintained an interest in the transfer activities that take place off of the coast and is aware that the recent history and record of the transfers has been good. However, the number of transfers taking place has increased as has the potential for a hazardous incident to occur. This increase in marine traffic around the coastline and rise in number of ship-to-ship transfers taking place has lead the government to believe that the time is now right to introduce legislation to further control ship-to-ship transfers and minimise the potential for and impact of a marine pollution incident taking place.
- A2.5 The recent interest of the national media and general public in this issue has further strengthened the view that now is the correct time to introduce regulation before a major incident occurs, and before the level of transfers taking place result in numerous small incidents that collectively have a larger effect than their individual impacts.
- A2.6 Much of the UK coastline and marine environment is of international importance and as such needs protection from the threat posed from increased transfer of oil around the coast. By introducing the proposed Regulation to reinforce the Habitats Directive and ensure that appropriate environmental considerations are made, the UK can maintain the highest level of protection for its unique flora and fauna.

A3. Policy Options

- A3.1 The policy options under consideration are as follows:

- § Option 1) Do Nothing
- § Option 2) Ban transfer operations in UK territorial seas (excluding statutory harbour areas).
- § Option 3) Ban transfer operations in UK territorial seas (excluding statutory harbour areas, and introduce a requirement for an Oil Transfer Licence within a harbour area where an oil transfer will not significantly impact upon European sites and has the environmental consent of the appropriate authority.

Option 1 - Do Nothing

- A3.2 This option would leave all transfer operations unregulated. Evidence shows that the UK has a generally responsible shipping industry which operates within international industry guidelines for the conduct of cargo transfer operations and voluntary UK measures for cargo and bunkering transfers. However, the absence of any regulatory control makes it impossible to guarantee that the excellent safety record that has been established would continue. The option also ignores the potential future hazards posed by operators who may wish to set up such activities without the necessary pollution control resources in place. .

Option 2 - Ban cargo transfer and bunkering transfer between ships in United Kingdom territorial seas (excluding statutory harbour areas)

- A3.3 Within UK waters, this option would force operators to conduct STS operations and bunker transferring operations within statutory harbour areas and thus prevent them from conducting such operations elsewhere in UK territorial seas. Within these harbour areas, oil spill contingency planning for STS and bunker transferring operations would be brought under the auspices of the OPRC Regulations, providing an additional element of control. Any port or harbour

allowing such operations to take place within its statutory harbour area would be legally bound to consider the operations as part of the OPRC contingency planning process. Furthermore, there are often additional resources in harbour areas, such as tugs, that would be of particular use in an emergency situation.

- A3.4 However, the measures recommended in this option would only be effective up to the 12 nautical mile (NM) limit of the UK territorial seas. Therefore, it would still notionally be possible for large tankers to conduct cargo or bunkering transfer operations just outside of the territorial sea. The UK is currently involved in negotiations at the International Maritime Organization (IMO) to draft a new chapter of Annex I of MARPOL (The International Convention for the Prevention of Pollution by Ships) which would regulate ship-to-ship transfers outside UK territorial waters but within the Pollution Control Zone. As an interim measure, the MCA would seek to discourage operators from conducting operations just outside of UK territorial seas.
- A3.5 Option 2 would be a viable way to proceed due to the additional control that the OPRC contingency planning process would place over contingency planning and pollution response when STS operations are carried out in statutory harbour areas. This option would remove the risks associated with STS and bunkering transfer operations that are carried out in UK territorial seas outside of statutory harbour areas.
- A3.6 However, Option 2 would not ensure that all of the policy objectives are met as it would not ensure that impacts upon European Sites ¹ as detailed within the Habitats Directive are appropriately considered within the decision making process, and would not ensure that cargo transfers within a harbour area have taken into consideration the environmental impact or have an appropriate environmental consent. This is the key difference between Option 2 and Option 3, and is the main reason why Option 2 has been discounted.

Option 3 - Ban transfer operations in UK territorial seas (excluding statutory harbour areas), and introduce a requirement for an Oil Transfer Licence within a harbour area where an oil transfer will not significantly impact upon European sites and has the environmental consent of the appropriate authority.

- A3.7 The preferred option is Option 3, which would only allow transfers to take place in statutory harbour areas subject to an appropriate licence being held. Within UK waters, this would force operators to conduct STS operations and bunker transferring within specified areas. Within these harbour areas, oil spill contingency planning for STS and bunker transferring operations would be brought under the auspices of the OPRC Regulations. Any port or harbour allowing such operations to take place within its statutory harbour area would be legally bound to consider the operations as part of the OPRC contingency planning process thus ensuring appropriate resources are in place should a pollution incident occur.

¹ Special Areas of Conservation (SACs), Special Protection Areas (SPAs) & Offshore Marine Sites (OMS)

- A3.8 In order for ship-to-ship transfers to be undertaken within a statutory harbour area, the harbour authority would have to apply for an Oil Transfer Licence. Application for this licence would be processed by the MCA, but would involve consultation with appropriate bodies, such as Natural England, as is deemed necessary.
- A3.9 A harbour authority would only allow cargo transfer operations within its waters for which an Oil Transfer Licence has been granted (note – an Oil Transfer Licence is not required for bunkering operations). As a part of the licence application due consideration would have to be given to the potential impact on the environment, with particular reference to any European Sites within the Harbour Authority Area. If required, a full environmental impact assessment would have to be undertaken prior to a licence being granted.
- A3.10 A requirement to obtain an Oil Transfer Licence from the appropriate authority would mean that, even where there was no designated European site within harbour authority waters, there would still be a requirement to assess the potential environmental impact of a cargo transfer.
- A3.11 As with Option 2, Option 3 would only be effective up to the 12 nautical mile (NM) limit of the UK territorial seas (see paragraph A3.4). Option 3 is preferred over option 2 for the following reasons:
- § Greater protection of the marine and coastal environment
 - § Ensure the impact of transfers are appropriately reviewed
 - § Ensure continued compliance with existing UK environmental legislation
 - § Compliance with Habitats Directive
 - § Ensures that adequate resources are in place should a pollution incident occur
 - § All policy objectives for the proposed Regulation would be achieved.

A4. Environmental Costs

- A4.1 It should also be noted that owners, operators, agents, brokers, oil spill responders and cargo transfer service providers that would be involved in cargo transfers between ships and also larger scale bunkering operations are often of a global nature. However, due to the UK's location on the trading route for export oil originating from Russia / the Baltic, the MCA consider that it is highly likely that operators would choose to carry out operations inside suitable UK ports.
- A4.2 Work is also underway at IMO to draft an 8th chapter to Annex I of the MARPOL convention entitled "Prevention of Pollution during oil transfer operations between ships at sea" which, if adopted would provide for an international control measure for transfer operations and a responsibility for all parties to the convention to implement domestic legislation.

A5. Enforcement, Sanctions and monitoring

- A5.1 Enforcement would be carried out by the Maritime and Coastguard Agency as

part of its existing enforcement activities. The proposed Regulations (Option 3) would provide for sanctions and would impose criminal sanctions for non-compliance. This would include provisions on summary conviction to fine the relevant parties an amount not exceeding £25,000, and on conviction on indictment to imprisonment for a term not exceeding two years, or a fine, or both. These penalties would be in line with those for other maritime offences and are considered to be proportionate to the nature of the offences.

- A5.2 It should be noted that if a transfer is made to or from a ship in contravention of the proposed Regulations (Option 3), the owner, the manager and the master of the ship shall each be guilty of an offence. It would however be a defence when charged under the proposed Regulations (Option 3) to prove that the transfer was for the purpose of securing the safety of a ship, prevention of damage to a ship or its cargo or for the purpose of saving life.

A6. Risk assessment of preferred option

A6.1 Outline of significant key risks

- A6.2 There are no direct risks associated with responding to a Government (MCA) consultation exercise.

- A6.3 There is a small risk to the Councils reputation as a Harbour Authority if it is not seen to respond to this important piece of legislation, especially as ship to ship transfers have taken place off Tor Bay in the past and have been serviced by the local marine industry.

- A6.4 For communities that are located near to ports and harbours that allow new / additional cargo transfer operations to be carried out inside their statutory harbour areas, it is possible that the risk of an oil spill occurring in their area could increase, with associated environmental costs to their locality. However, the MCA expect that bringing operations under the control of the OPRC Regulation, and ensuring harbour authorities consider potential environmental impact in advance of the transfer taking place, would outweigh the risk from bringing the transfers closer to shore. It is extremely unlikely that Tor Bay Harbour would be used for future ship to ship transfers and the risk is therefore considered to be very low.

A6.5 Remaining risks

- A6.6 There are no remaining risks.

A7. Other Options

- A7.1 Not to respond to the Government's consultation exercise.

A8. Summary of resource implications

- A8.1 A modest amount of Officer time will be required to compose a suitable response.

A9. What impact will there be on equalities, environmental sustainability and crime and disorder?

- A9.1 Both Option 2 and Option 3 are of a technical nature, and are therefore race, gender and disability non-specific.
- A9.2 Torbay's coastline and marine environment is of great importance and as such needs protection from the potential threat posed from the possibility of oil cargo transfers off Tor Bay in Lyme Bay. By introducing the proposed Regulation to reinforce the Habitats Directive and ensure that appropriate environmental considerations are made, the UK can maintain the highest level of protection, where necessary, for its unique flora and fauna.
- A9.3 There could be an environmental impact if ships were attracted to Tor Bay Harbour to undertake oil cargo transfers or increase the frequency of bunkering operations. An oil spill could have a significant impact on our environment, the local economy and the community of Torbay.
- A9.4 There are no impacts on crime and disorder.

A10. Consultation and Customer Focus

- A10.1 Both the Torquay/Paignton Harbour Liaison Forum and the Brixham Harbour Liaison Forum have been consulted on this subject to gauge their respective views.

A11. Are there any implications for other Business Units?

- A11.1 No other Business Units will be affected by the recommendation contained in this report. Any response to this consultation will be on behalf of the Council as a harbour authority. Other Council departments may respond separately.

Appendices

Appendix 1 Draft Merchant Shipping (Ship-to-Ship Transfer) Regulations 2010

Appendix 2 Draft Marine Guidance Note - Merchant Shipping (Ship-to-Ship Transfer) Regulations 2010

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report:

Impact Assessment of the Merchant Shipping (Ship-to-Ship Operations) Regulations 2010 – Maritime & Coastguard Agency