



Bunker disputes in the dual-fuel era

The maritime industry has seen a significant shift toward dual-fuel vessels, driven by regulatory and economic considerations. However, the transition has brought new bunker management challenges, particularly for Very Low Sulfur Fuel Oil (VLSFO).

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The short shelf life of VLSFO has been a widely recognized challenge within the industry, and it has sparked some complex disputes between owners and charterers over consumption choices and responsibilities.

The latest CIMAC 2024 guidelines reiterate that VLSFO may degrade faster than traditional High Sulfur Fuel Oil (HSFO), and recommends that consumption should happen ideally within six months – possibly even sooner for biofuels – in other words, a period significantly shorter than the two-year storage lifespan traditionally associated with HSFO.

Typical challenges

Dual-fuel vessels typically operate with a choice between VLSFO and Liquefied Natural Gas (LNG), with charterers often opting for LNG due to economic incentives. This creates a scenario where VLSFO bunkers remain stored for extended periods, increasing the risk of deterioration. The fundamental questions that arise include:

- Are charterers entitled to dictate fuel consumption preferences?
- Who is responsible for monitoring and maintaining bunker quality?
- Can owners override charterers' fuel orders if the stored bunkers are at risk of becoming unusable?
- Who bears the cost if fuel degradation leads to engine damage or off-hire periods?

Charterers' right to dictate fuel usage

Charterparties, particularly in LNG carrier operations, often grant charterers the right to direct which fuel type should be used and when. Standard clauses such as those found in ShellLNGTime 1 and 2 affirm this right:

" Charterers shall provide and pay for all fuel... which in accordance with charterers' instructions is to be used as fuel. " (ShellLNGTime1, Clause 9a)

A similar right is often found in dual-fuel vessel contracts, where owners must comply with charterers' directives on fuel selection unless overridden by safety concerns. This raises a contentious issue—if charterers consistently instruct owners to use LNG, thereby preventing the consumption of VLSFO, is it reasonable to hold owners responsible for fuel deterioration? The issue grows more contentious when using bunkers in the EU may attract penalties.

Responsibility for bunker management

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Owners may argue that charterers' obligation to supply on-specification fuel is a continuing duty, extending beyond the point of delivery. This interpretation is

particularly relevant in dual-fuel vessels, where charterers effectively control the duration for which VLSFO remains unused. Owners may also invoke an implied indemnity, asserting that charterers' employment orders directly caused the fuel to degrade and any resulting damage.

Conversely, charterers may contend that their obligation is limited to supplying compliant fuel at the time of delivery. They argue that bunker care falls under the vessel's operational management, making it the owners' duty to monitor fuel stability and take preventive measures such as fuel testing, additive treatments, and circulation.

Legal and practical considerations

From a legal standpoint, there is no settled case law directly addressing fuel deterioration due to prolonged storage. However, established principles from charter party disputes provide guidance:

- In *The Hill Harmony* case the court emphasized that charterers' orders must not encroach upon the master's responsibility for vessel safety and seaworthiness.
- The Sale of Goods Act 1979 suggests that if fuel is supplied for a known purpose (e.g., to be used over an extended period), it should remain fit for that purpose.
- Owners could claim implied indemnity, arguing that they should not bear financial losses from following charterers' instructions for risks they had not agreed to take on.

In practice, owners may have no option but to burn the bunkers before they become unusable, even if this contradicts charterers' fuel consumption orders. While this could lead to disputes, it may ultimately be the lesser of two financial risks compared to fuel removal, disposal, or engine damage.

Owners therefore may find themselves in a difficult position – they must follow charterers' bunker use instructions, but doing so could lead to additional costs from having to ensure that other bunkers stored on board remain usable.

The best way to address this issue is to include express wording in the contract that entitles Owners / Master to have the final decision over which fuel is consumed if the Master has valid and reasonable concerns over the stability of the bunkers. This is something Gard can assist members with.

Given that calling in the EU may also raise further issues arising from choice of fuel, careful consideration should be given to the drafting of charter party Fuel EU and bunkers clauses.

Related reading: [FuelEU: BIMCO's new clause and its implications | Gard's Insights](#)

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Bunkers on delivery and redelivery

Another complexity arises upon vessel redelivery. Most charter parties include clauses requiring charterers to accept and pay for all remaining onboard bunkers (ROBs) upon delivery, with owners doing the same at redelivery. However, in short-term charters, this may lead to situations where deteriorated bunkers are returned in a worse condition than when received, raising further disputes over liability.

A reconciliation mechanism or specific clause addressing fuel stability at redelivery could mitigate potential conflicts, ensuring that owners are not burdened with unusable bunkers while charterers are protected from excessive liabilities.

Conclusion

The issue of bunker deterioration in dual-fuel vessels is a growing challenge with no simple solution. While charterers often have the right to dictate fuel usage, they must recognize the practical implications of prolonged VLSFO storage and they may need to make concessions on their right to give instructions on the use of their bunkers. Owners, on the other hand, should actively monitor fuel quality and take preventive measures to mitigate losses. Clear contractual terms, regular fuel testing, and cooperative decision-making between owners and charterers are essential to navigating this complex landscape.

The author thanks colleague Oliver Goossens for valuable inputs to this article

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