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New Zealand - management of biofouling risk

New Zealand authorities recently ordered a vessel entered with Gard to move outside its territorial waters immediately as they suspected that the vessel's hull carried organisms that may be harmful to the New Zealand marine environment.

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Along with ballast water, biofouling1 is accepted internationally as a major cause of the spread of aquatic invasive species to new regions and in May 2014, the New Zealand Ministry of Primary Industries (MPI) issued a "Craft Risk Management Standard" (CRMS) addressing the biofouling risk associated with vessels arriving at New Zealand ports. The CRMS is scheduled to enter into force on 15 May 2018, but voluntary compliance is encouraged during the four years leading up to that date.

However, even today, prior to entry into force of the new CRMS, MPI may direct the owners of a vessel that is considered to pose a severe biosecurity risk due to the marine life carried on its hull to take specific action.

A recent case

A vessel entered with Gard was recently ordered to move outside New Zealand territorial waters immediately. The order was issued under Section 33(1)(b) of the Biosecurity Act 1993: "*Where there are any risk goods on board or attached to the outside of a craft that has entered New Zealand territory from outside New Zealand territory, an inspector may direct the master or other person in charge of the craft to … (b) move the craft outside New Zealand territory (immediately, or within a period specified by the inspector)*."

The vessel had been sitting at anchor for an extended period of time off the coast of one of the Melanesian islands prior to entering New Zealand waters. When filing the required notice of arrival at Auckland Port, the MPI requested evidence that the vessel had implemented measures to manage and reduce hull fouling during this stationary period.

Upon receipt of documentation submitted by the vessel, which allegedly showed no evidence of hull cleaning or anti fouling having been done during the vessel's stationary period, the MPI determined that the vessel had not properly managed its biofouling risk and claimed to have reasonable grounds to suspect that the vessel's hull carried organisms that may cause harm in New Zealand waters. The vessel was initially allowed to remain at anchor in New Zealand waters until the actual biosecurity risk could be measured. However, when it became clear that it would take several days to collect and analyse samples from the vessel's hull, the MPI inspector decided that the potential risk was too high. The vessel was directed to move outside New Zealand territory immediately and remain there until a 'clean hull' could be evidenced.

The vessel was eventually allowed to re-enter New Zealand territorial waters. No penalties were imposed by the MPI but the operational costs associated with use of divers, cleaning of the hull and delays were substantial.

New Zealand's new biofouling regulation

New Zealand is known for its unique nature and marine environments and border security has therefore traditionally focussed heavily on biosecurity. All vessels travelling to New Zealand (including commercial ships, pleasure crafts, oil rigs, etc.) must comply with a number of requirements before and on arrival to ensure the country's environment, economy and people are protected from imported pests and diseases.

The CRMS on biofouling entering into force on 15 May 2018 applies to any vessel that will anchor, berth or be brought ashore in New Zealand after a voyage originating outside New Zealand's territorial waters. In summary, the new regulation:

- Require vessels to arrive with 'clean hulls' - for most vessels 'clean' means no biofouling apart from a slime layer, but for fast turnaround vessels that only visit official ports of arrival, a small amount of biofouling is permitted.

- Provide three options for the proper management of biofouling: a) cleaning before entry (carried out less than 30 days before arrival in New Zealand or within 24 hours after arrival); b) continuous maintenance using best practice, e.g. the IMO's guidelines for

management of ships' biofouling in Res.MEPC.207(62); or c) application of approved treatments.

- List the general information which must be provided upon arrival as well as the information which must be provided if there are reasonable grounds to suspect that a vessel's hull carries organisms that may cause harm in New Zealand waters.

A Guidance Document accompanies the CRMS to show how the requirements will operate at the New Zealand border from 2018. This is currently a draft but will be further refined during the lead up to the entry into force.

Recommendations

In order to avoid undue risk of delay and incurring additional costs of hull cleaning when calling at New Zealand ports, Members and clients trading in this region are advised to:

- Familiarise themselves with the new CRMS on biofouling well in advance of 15 May 2018. The MPI's "Advice to shipping: New Zealand's new biofouling requirements" should also be distributed to the relevant vessels.

- Revisit and update existing onboard procedures (e.g. biofouling management plan) to ensure compliance with New Zealand's biosecurity legislation. Prior to entry into force of the new CRMS, the MPI will continue to take action in cases of severe biofouling, as has been done in the past, under the Biosecurity Act (1993).

- Carry evidence on board for the purpose of demonstrating proper management of biofouling risk to an MPI inspector.

It is worth noting, however, that since following best practice according to the IMO guidelines for management of ships' biofouling in Res.MEPC.207(62) is deemed to meet the requirements of the new CRMS, many vessels are likely to already be compliant.

For more information on current and future biosecurity requirements for vessels arriving at New Zealand ports, see the MPI's webpage on "Standards and Regulations concerning Sea Craft (Vessels)".

1 Biofouling, also known as hull fouling, is defined by the IMO as "*the accumulation of aquatic organisms such as microorganisms, plants and animals on surfaces and structures immersed in or exposed to the aquatic environment*."