

US Takes Russia Sanctions Showdown To Sea

By Jennifer Doherty

Law360 (October 12, 2023, 9:05 PM EDT) -- Sanctions announced Thursday on two ships in Russia's illicit "dark fleet" of tankers show the United States' latest approach to cracking down on the Kremlin's enablers abroad, which often carry closer ties to Moscow than they seem.

The drumbeat of sanctions that have streamed out of U.S. agencies since Russian President Vladimir Putin launched his "special military operation" against Ukraine in February 2022 have taken special aim at Russia's energy exports, a driver of the country's economy.

Now, experts say the latest designations punishing ships that transport Russian oil sold at prices above a price cap of \$60 a barrel, and employ U.S. maritime services in the process, herald a new wave of sanctions.

"Today's designations were very much a shot across the bow to tell bad actors that yes, if you keep trying to evade the Russia price cap, we will place you under blocking sanctions," said David Tannenbaum, formerly the lead sanctions compliance specialist for the U.S. Treasury Department's Office of Foreign Assets Control.

Tannenbaum, now the director of Blackstone Compliance Services, which tracks the movements of shadow shipping networks, also pointed out that one of the ships designated Thursday, the SCF Primorye, is actually operated by Russia's largest maritime shipping company.

Primorye's registered owner, the now-sanctioned company Lumber Marine SA, is based in the United Arab Emirates and owns only the one ship.

"However, the manager is actually Sovcomflot and their shell company that they've created in the UAE, which is SUN Ship Management," Tannenbaum explained, adding that Sovcomflot had handed off "a hundred or so" ships to its Dubai-based offshoot.

The United Kingdom and the European Union, which are also members of the Price Cap Coalition, have already blocked Sovcomflot from transactions that touch their financial systems. But the U.S. imposed debt and equity sanctions against the company on the very first day of the war in Ukraine, without going further.

Whether OFAC will crack down on Sovcomflot directly will be "fascinating" to watch, Tannenbaum said.

The surgical approach the agency took in designating the two ships individually is a testament to the care OFAC has taken not to cause unnecessary disruption, Mac Fadlallah, partner at Akin Gump Strauss Hauer & Feld LLP, told Law360.

"This [administration's] OFAC in particular has gone to great lengths to assess what the economic impact will be and whether there will be any unintended consequences associated with any particular sanctions actions," he said.

Fadlallah called OFAC's Specially Designated Nationals list "one of the closest things that this world has to a global blacklist." The roster of individuals and entities barred from any kind of transactions touching the U.S. now includes the SCF Primorye and another ship, the YasaGolden Bosphorus.

OFAC claimed authority to sanction the ships based on their use of U.S. maritime service providers while transporting the illicit oil, but notably did not include penalties for the U.S. companies that provided services to the designated ships.

"Unprecedented engagement with industry across the coalition partners" at the outset of the price cap allowed the Biden administration to take action against bad actors without giving domestic maritime service providers reason to panic, said Jason Prince, who helped craft the initial price cap guidance during his tenure as OFAC chief counsel

"In this case, it looks likely that these entities must have in some way, for lack of a better term, duped the U.S. service providers that were involved," said Prince, now a partner at Crowell & Moring LLP.

As long as those companies collected the required documentation and attestations to show they did not work with the shadow fleet knowingly, they should be able to claim safe harbor, according to Prince.

OFAC also performed a long wind-up ahead of the designations. As far back as April, the agency warned players in the maritime services sector that ships were using various tricks to disguise Eastern Siberia-Pacific Ocean crude they loaded at ports along Russia's east coast.

On Thursday, the YasaGolden Bosphorus was sanctioned for doing just that.

"To be able to prevent future violations of that sort or breaches of the cap, there will be more enforcement actions, I would anticipate, in the coming weeks," Prince said.

The coalition of countries enforcing the price cap issued a statement of support in tandem with the announcement and a memo to service providers on how to stay out of trouble in brushes with the shadow fleet, though the U.S. was the sole country to issue sanctions.

"The coalition's 'best practices' are not novel and illustrate long-established, industrywide protocols that were designed to address circumvention," said Ashley W. Craig, co-chair of Venable LLP's international trade and logistics group. "But, in the end, it requires a true multilateral implementation — and enforcement."

--Editing by Robert Rudinger.