

Complying With The US Ban On Russian-Affiliated Vessels

By **Jeffrey Orenstein and Luke Reid** (May 3, 2022)

On April 12, President Joe Biden issued a proclamation prohibiting Russian-affiliated vessels from entering U.S. ports.[1]

This action significantly builds upon U.S. sanctions against Russia in the maritime sector that already target certain vessels, cargos and blocked parties. Some vessels that were previously not affected by existing U.S. sanctions against Russia may now be barred from entering U.S. ports under this proclamation.

Russian Vessel Ban

The proclamation's ban on the entry of Russian-affiliated vessels went into effect April 28 and applies to all vessels that either:

- Sail under the Russian flag, i.e., are registered in Russia;
- Are Russian-owned, i.e., the legal title of ownership of the vessel that appears on the ship's registration documents is the government of the Russian Federation or a Russian company, citizen or permanent resident; or
- Are Russian operated, i.e., a Russian company, citizen or permanent resident is responsible for the commercial decisions concerning the employment of a ship and decides how and where that asset is employed.



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The proclamation makes a narrow exception for the entry of Russian-affiliated vessels used in the transport of "special nuclear material," "source material," and "nuclear byproduct material," as those terms are defined under the Atomic Energy Act.

The proclamation also permits entry of Russian-affiliated vessels due to force majeure to allow seafarers to disembark or embark for purposes of conducting crew changes, emergency medical care or for other humanitarian need.

Vessel Ban Enforcement – Denial of Entry Into U.S. Waters

The proclamation's ban on Russian-affiliated vessels was issued pursuant to the Magnuson Act, Title 46 of the U.S. Code, Section 70051, which provides the secretary of homeland security and the U.S. Coast Guard broad authority to control the movement of foreign flag vessels in U.S. waters, including the right to seize such vessels under some circumstances. The proclamation cites this statutory authority expressly.

All foreign flag vessels destined for U.S. ports are screened by the U.S. Coast Guard, U.S.

Customs and Border Protection and a variety of other agencies within the U.S. government. Upon submission of a vessel's 96-hour advanced notice of arrival, the vessel is screened by these agencies.

During that screening process, if the vessel is determined to be a Russian-affiliated vessel, the U.S. Coast Guard will issue an order to the vessel denying entry into U.S. waters pursuant to the Magnuson Act and the proclamation.

Violations of such orders may result in significant criminal and civil penalties. If such an order is issued, a vessel owner or operator has the right to appeal the order to higher authorities, pursuant to existing regulations.

As a practical matter, vessel owners, charterers and operators will be best served by conducting robust due diligence to identify and resolve potential issues of concern, prior to submission of the advanced notice of arrival for the vessel.

Other Maritime-Related Sanctions

The ban on Russian-affiliated vessels builds upon existing U.S. sanctions against Russia that relate to vessels calling U.S. ports.[2] Principal among these are the blocking of certain Russian vessels and restrictions on import shipments of certain Russian-origin goods.

Blocked Vessels and Owners

Pursuant to various executive orders issued between 2014 and 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control has designated approximately 40 Russian-affiliated vessels to the specifically designated nationals and blocked persons, or SDN, list.

Numerous other vessels are blocked by virtue of the fact that they are owned 50% or more by parties on the SDN list. Like any other blocked property, if these vessels enter U.S. jurisdiction or the possession of a U.S. person, they must be physically blocked and can be seized by U.S. authorities.

U.S. shippers, freight forwarders, insurers, financial institutions, suppliers and other U.S. persons are strictly prohibited from any dealings with such vessels, including chartering, booking cargo, or providing any goods, services, or funds for blocked vessels.

Sovcomflot, Russia's largest shipping company, is not fully blocked, but, under Directive 3 of Executive Order No. 14024, Sovcomflot is subject to debt restrictions.

Specifically, U.S. persons or persons within the U.S. are prohibited from all dealings with Sovcomflot in new debt of longer than 14 days maturity or new equity, where such new debt or new equity is issued on or after March 26. Among other things, this restriction prohibits any extension of credit or payment terms to Sovcomflot that are longer than 14 days.

Import Shipments

In addition to sanctions that block vessels and bar Russian-affiliated vessels from U.S. ports, U.S. sanctions impose restrictions on import shipments that involve certain cargos and cargo interests. Under Executive Order No. 14066,[3] U.S.-bound shipments of most Russian-origin energy products are prohibited, including shipments of Russian crude oil, petroleum, petroleum fuels, oils and products of their distillation; liquefied natural gas, coal

and coal products.

Under Executive Order No. 14068,[4] import shipments of Russian-origin products, such as fish, seafood, seafood preparations, alcoholic beverages and nonindustrial diamonds are also prohibited.

Even when imported cargo falls outside the categories of goods subject to specific import bans, shipments to the U.S. may nevertheless be subject to sanctions if they involve blocked parties or property — i.e., parties on the SDN list, or parties or property owned 50% or more by one or more parties on the SDN list.

Due Diligence

To avoid the potential of being denied entry into U.S. ports, prior to engaging in trade in the U.S., all vessel owners, operators, charterers and other vessel interests should carefully review all affiliations to Russian citizens, corporations or other entities to ensure the vessel will not be deemed a Russian-affiliated vessel under the proclamation.

More broadly, U.S. sanctions, like those described above, call for continuous due diligence on the part of all U.S. and non-U.S. parties involved in the shipment of goods to the U.S.

It is important to screen all vessels, vessel owners, charterers, cargo interests, financial institutions and any other parties involved directly or indirectly in the shipment to ensure they are not blocked or subject to other trade restrictions.

It is also necessary to be alert and to investigate any red flags that suggest the use of deceptive shipping practices, such as: ship-to-ship transfers used to conceal facts regarding the vessel, its cargo or parties involved; disabling or manipulating a vessel's automatic identification system to conceal a vessel's movements; and falsifying cargo and vessel documents, including false certifications regarding the cargo's country of origin.

OFAC discussed such illicit shipping and sanctions evasion practices in a sanctions advisory[5] published in May 2020. This advisory provides guidance on the most common methods used to evade sanctions in the shipping sector, especially in the energy and metals sectors.

As economic sanctions against Russia escalate, the shipping industry should be prepared to detect and respond to such illicit practices as part of their compliance efforts.

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[1] Declaration of National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Russian-Affiliated Vessels to United States Ports, Proclamation No. 10371, 87 Fed. Reg. 24265 (April 21, 2022).

[2] This article does not address sanctions related to U.S. export shipments, but it is

important to note that U.S. authorities can impose penalties and sometimes block parties that are involved (directly or indirectly) in exporting or facilitating export shipments of various dual-use items, software, and technology, luxury goods, defense articles, and goods related to Russia's marine, energy, aerospace, and electronics sectors, among other export restrictions.

[3] Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine, Exec. Order No. 14055, 87 Fed. Reg. 10293 (February 23, 2022).

[4] Executive Order on Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression, Exec. Order No. 14068, 87 Fed. Reg. 14381 (March 11, 2022).

[5] Sanctions Advisory to the Maritime Industry, Energy and Metals Sector, and Related Communities, jointly issued by the Department of Treasury, Department of State, and U.S. Coast Guard, dated May 14, 2020, available at: https://home.treasury.gov/system/files/126/05142020_global_advisory_v1.pdf.