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MARINE CIRCULAR

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FOR: Ship Owners, Ship Managers, Ship Operators, Ship Masters, Ship Officers, Recognized Organizations, Flag State Inspectors

SUBJECT: SANCTIONS AGAINST NORTH KOREA

DEFINITIONS:

The following abbreviations stand for:

- "AIS" – Automatic Identification System
- "IMO" – International Maritime Organization
- "LRIT" – Long Range Identification & Tracking
- "MMSI" – Maritime Mobile Service Identity
- "NK" – North Korea
- "OFAC" – Office of Foreign Assets Control (US Treasury Department)
- "STS" – Ship-to-ship
- "UNSC" – UN Security Council
- "UN" – United Nations
- "US" – United States of America

The term "Administration" shall mean the Tuvalu Ship Registry.

PURPOSE:

This circular serves to inform all parties of the deceptive shipping practices used by NK to evade US and UN sanctions thus exposing parties involved in the shipping industry, such as insurers, flag States, shipping companies, and financial institutions, to significant sanction risks, as well as measures that parties may implement to mitigate such risks.

REFERENCES:

- (a) North Korea Sanctions Advisory, *Sanctions Risks Related to North Korea's Shipping Practices*, 23 February 2018

Note: The above advisory contains two annexes which are appended to this circular. The first provides an overview of US and UN sanctions relevant to the shipping industry, including a non-exhaustive list of bases for which persons can be sanctioned by OFAC. The second provides a list of North Korean vessels that are capable of engaging in ship-to-ship transfers)

BACKGROUND:

The US is committed to disrupting NK's illicit funding of its weapons programs, regardless of the location or nationality of those facilitating such funding and will continue targeting persons, wherever located, who facilitate North Korea's illicit shipping practices as the NK shipping industry is a primary means by which NK evades sanctions to fund its nuclear weapons and ballistic missile programs. The US and its international partners have demonstrated resolve to pursue those violating sanctions in the NK shipping industry through the adoption of UN port entry bans, the detention of vessels complicit in sanctions evasion, and through national-level sanctions designations.

Both the US and the UN maintain robust sanctions regimes against NK. The US prohibits trade and other transactions directly or indirectly involving NK, and the US can sanction entities and individuals who engage in trade, among many other things, with NK. The UN prohibits most exports and imports, with very limited exceptions, and maintains prohibitions related to STS transfers, sanctions evasion, and port entry of designated vessels, among other areas.

Tuvalu is committed to upholding US and UN sanctions against NK and the Administration has, through the NK Sanctions Advisory issued on 23 February 2018 by the US Treasury Department, become aware of the deceptive shipping practices used by NK to evade sanctions and has taken strong measures to mitigate sanction risks, such as carrying out an enhanced screening process for all new registrations, and monitoring of the AIS and LRIT positions of currently flagged vessels. Any vessels found to be suspected of engaging in illicit shipping practices with NK shall have their registrations cancelled without notice.

A. DECEPTIVE SHIPPING PRACTICES EMPLOYED BY NK:

The following list provides examples of the types of tactics used by NK to obfuscate the identity of the vessels, the goods being shipped, and the origin or destination of cargo:

1. **Physically Altering Vessel Identification:** Maritime vessels meeting certain tonnage thresholds are required to display their name and vessel IMO number in a visible location either on the ship's hull or superstructure. A vessel's IMO number is intended to be permanent and should remain consistent regardless of a change in a vessel's ownership or name. NK-flagged merchant vessels have physically altered their vessels to obscure their identities and attempt to pass themselves off as different vessels. These physical alterations include painting over vessel names and IMO numbers with alternate ones.
2. **NK STS Transfers:** STS transfers are a method of transferring cargo from one ship to another while at sea rather than while located in port. STS transfers can conceal the origin or destination of cargo. NK operates a fleet of 24 tankers capable of engaging in STS transfers of refined petroleum products and other banned goods. The names and IMO numbers of these vessels are listed in Annex 2, though they are subject to change as NK seeks to conceal the identity of vessels it owns and operates. The map on the following page shows area where ship-to-ship transfers commonly occur:



3. **Falsifying Cargo and Vessel Documents:** Complete and accurate shipping documentation is critical to ensuring all parties to a transaction understand the parties, goods, and vessels involved in a given shipment. Bills of lading, certificates of origin, invoices, packing lists, proof of insurance, and lists of last ports of call are examples of documentation that typically accompany a shipping transaction. NK has been known to falsify vessel and cargo documents to obscure the origin or destination of cargo.
4. **Disabling AIS:** AIS is a collision avoidance system, which transmits, at a minimum, a vessel's identification and select navigational and positional data via very high frequency (VHF) radio waves. While AIS was not specifically designed for vessel tracking, it is often used for this purpose via terrestrial and satellite receivers feeding this information to commercial ship tracking services. Ships meeting certain tonnage thresholds and engaged in international voyages are required to carry and operate AIS; however, NK-flagged merchant vessels have been known to intentionally disable their AIS transponders to mask their movements. This tactic, whether employed by NK-flagged vessels or other vessels involved in trade with NK, could conceal the origin or destination of cargo destined for, or originating in, NK.
5. **Manipulating AIS:** North Korean-flagged merchant vessels have also been known to manipulate the data being transmitted via AIS. Such manipulation could include altering vessel names, IMO numbers, MMSIs, or other unique identifying information. This tactic could also be used to conceal a vessel's next port of call or other information regarding its voyage.

B. RISK MITIGATION MEASURES

The risk of engaging in prohibited activity or processing prohibited transactions can be mitigated by implementing the following types of measures:

1. **Monitor for AIS Manipulation:** Ship registries, insurers, charterers, vessel owners, or port state control entities should consider investigating vessels that appear to have turned off their AIS while operating in the area surrounding the Korean peninsula. Any other signs of manipulating AIS transponders should be considered red flags for potential illicit activity and should be investigated fully prior to continuing to provide services to, processing transactions involving, or engaging in other activities with such vessels.
2. **Conduct Research Prior to STS Transfers:** Vessels conducting STS transfers in the area surrounding the Korean peninsula should be aware of the potential for NK vessels to use deceptive practices to hide their identities, including by using false vessel names or IMO numbers. Vessel operators should ensure that they have verified the vessel name, IMO number, and flag prior to engaging in such a transfer, and ensure there is a legitimate business purpose for the STS transfer.
3. **Review All Applicable Shipping Documentation:** Individuals and entities processing transactions pertaining to shipments potentially involving NK-flagged vessels or shipments to or from NK should ensure that they request and review complete and accurate shipping documentation. Such shipping documentation should reflect the details of the underlying voyage and reflect the relevant vessel(s), cargo, origin, and destination. Any indication that shipping documentation has been manipulated should be considered a red flag for potential illicit activity and should be investigated fully prior to continuing with the transaction. In addition, documents related to STS transfers should demonstrate that the underlying goods were delivered to the port listed on the shipping documentation.
4. **Clear Communication with International Partners:** Not all parties to a shipping transaction may be subject to the same sanctions regimes, so clear communication is a critical step for international transactions. Clearly communicating US and UN sanctions obligations and discussing sanctions compliance obligations with parties to a transaction can ensure more effective compliance with relevant sanctions programs.
5. **Leverage Available Resources:** There are several organizations that provide commercial shipping data, such as ship location, ship registry information, and ship flagging information. This data should be incorporated into due diligence practices, along with available information from OFAC, the UN, and the Coast Guard, as outlined below section (D) under “N Sanctions Resources”.

C. PENALTIES FOR VIOLATIONS OF US AND UN SANCTIONS

1. Individuals and entities engaged in shipping-related transactions should be aware of the potential consequences for engaging in prohibited or sanctionable conduct.
2. OFAC investigates apparent violations of its regulations and maintains enforcement authority as outlined in its Economic Sanctions Enforcement Guidelines. Persons that violate US sanctions with respect to NK can be subject to civil monetary penalties equal to the greater of twice the value of the underlying transaction or \$289,238, per each violation. For additional information regarding OFAC’s enforcement authorities, Economic Sanctions Enforcement Guidelines, and recent civil penalties and enforcement actions, please go to: <https://www.treasury.gov/resource-center/sanctions/CivPen/Pages/civpen-index2.aspx>
3. The UN also maintains various enforcement mechanisms for ensuring compliance with its requirements. It may direct a member state and the relevant shipping registry to drop registration of a ship designated by the UN for violating sanctions and may also direct that it be denied entry at all ports. Ships suspected to be carrying UN prohibited cargo may be

inspected at sea upon the consent of the flag state, or directed by the flag state to proceed to a specific port for inspection. Vessels whose registration cannot be confirmed or who are deregistered by the flag state may be treated as a vessel without nationality and be subject to the laws of the nation conducting the inspection.

D. NK SANCTIONS RESOURCES

1. For questions or concerns related to OFAC sanctions regulations and requirements, including to disclose a potential violation of U.S. sanctions regulations, please contact OFAC's Compliance Hotline at 1-800-540-6322 or via OFAC_Feedback@treasury.gov. To submit a request for a specific OFAC license, go to: <https://licensing.ofac.treas.gov/Apply/Introduction.aspx>.
2. IHS Maritime is the manager of the IMO ship numbering scheme. For verification of IMO numbers for individual ships, you can find existing IMO numbers at <https://gisis.imo.org/Public/SHIPS/Default.aspx>. IHS Maritime can be contacted via email at ship.imp@ihs.com or at the following address: IHS Maritime, Sentinel House, 163 Brighton Road, Surrey CR5 2YH, United Kingdom.
3. The US Coast Guard, in coordination with the Department of State, has published a list of vessels that are owned or operated by NK or a NK person which will be denied entry to all USW ports. This list is separate from that maintained by OFAC or described in Annex 2. The link to that list is located at: <http://www.nvmc.uscg.gov/CAATSA.aspx>. For questions regarding the list, please call or e-mail the Coast Guard's Headquarters Foreign & Offshore Vessel Compliance Division, 202-372-1232, portstatecontrol@uscg.mil
4. To report potential NK-related UN shipping violations, including suspected STS transfers with NK-flagged vessels in violation of UN requirements, please email: DPRKcargo@state.gov

ANNEX 1

Overview of Sanctions Related to the Maritime Industry

Insurers, flag registries, shipping companies, financial institutions, and others involved in shipping-related transactions may be subject to one or more sanctions prohibitions related to North Korea. A high-level overview of these prohibitions follows, but all individuals and entities reviewing this advisory are encouraged to ensure they understand fully all sanctions obligations that pertain to their activities. Please note this section is current as of the date of this advisory – the most up-to-date information can be found at the websites listed in the footnotes below.

The United States prohibits, among other things²:

- Any transactions or dealings with the Government of North Korea or the Workers' Party of Korea;
- Direct or indirect exports and imports to or from North Korea of nearly all goods, services, and technology;
- Vessels that have called at a port in North Korea in the previous 180 days, and vessels that have engaged in an STS transfer with such a vessel in the previous 180 days, from calling at a port in the United States; and
- Registering a vessel in North Korea, obtaining authorization for a vessel to fly the North Korea flag, and owning, leasing, operating, and insuring any vessel flagged by North Korea.

The United Nations prohibitions include but are not limited to³:

- Owning, leasing, operating, chartering, or providing vessel classification, certification or associated service and insurance or re-insurance, to any DPRK-flagged, owned, controlled, or operated vessel;
- Providing insurance or re-insurance services to vessels Member states have reasonable grounds to believe were involved in activities or the transport of items prohibited by the relevant resolutions;
- Providing bunkering or servicing of North Korean vessels suspected of carrying prohibited items;
- STS transfers to or from North Korean-flagged vessels of any goods or items that are supplied, sold, or transferred to or from North Korea; and

² These prohibitions apply to transactions by a U.S. person or within the United States, including those that pass through the U.S. financial system. In addition, this document is explanatory only and does not have the force of law. This document does not supplement or modify the statutory authorities, Executive orders (E.O.s), or regulations. For additional details on OFAC prohibitions related to North Korea, see www.treasury.gov/ofac

³ All UN Member States have a legal obligation to implement the sanctions measures imposed by UN Security Council resolutions (UNSCRs). North Korea-related UNSCRs can be found at the 1718 Committee website at <https://www.un.org/sc/suborg/en/sanctions/1718>.

- Port entry of vessels if designated by the United Nations Security Council (UNSC) or if a State has information that provides reasonable grounds believe that vessel is owned, controlled, or operated by persons designated by the UNSC.

While the U.S. government imposes a comprehensive prohibition on the importation of North Korean goods, the UN prohibits the **importation** from North Korea of the following:

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|---------------------|----------------------------------|---|
| • Coal | • Silver | • Electrical equipment |
| • Textiles | • Titanium ore | • Earth and stone, including magnesia and magnesite |
| • Seafood | • Rare earth metals | • Wood |
| • Iron and iron ore | • Vanadium ore | • Vessels |
| • Lead and lead ore | • Statues and monuments | • Fishing rights |
| • Copper | • Conventional arms | |
| • Nickel | • Food and agricultural products | |
| • Zinc | • Machinery | |
| • Gold | | |

Similarly, the U.S. government imposes a comprehensive prohibition on the exportation of goods to North Korea, the UN prohibits the **exportation** to North Korea of the following goods:

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|---|--|--|
| • Refined petroleum* (beyond 500,000 barrels/year) | • Rocket fuel | • Iron, steel, and other metals |
| • Crude oil* (beyond 4,000,000 barrels/year) | • Condensates and natural gas liquids | • Conventional arms |
| • Aviation fuel (except fuel required for an aircraft to return to North Korea) | • Industrial machinery | • Ballistic missiles |
| | • All transportation vehicles (including motor vehicles, trucks, trains, ships, aircraft, helicopters) | • Weapons of mass destruction & components |
| | | • Luxury goods |

**Any transfers below the annual cap established by the UNSC (a) must be fully reported to the 1718 Committee within 30 days, (b) must not involve any individual or entity associated with the DPRK's nuclear or ballistic missile programs or other UNSC-prohibited activities, and (c) must be exclusively for livelihood purposes of DPRK nationals and unrelated to generating revenue for the DPRK's nuclear or ballistic missile programs or other UNSC-prohibited activities. If any of these three conditions are not met, even transactions below the authorized annual cap are a violation of UNSC resolution 2397.*

Binding and non-binding UNSC measures (to be implemented by UN Member States):

Actions on the high seas:

- Inspect vessels with consent of the flag State, on the high seas, if inspecting State has information that provides reasonable grounds to believe that the vessel carries prohibited cargo (**non-binding**);
- Flag State to cooperate with such inspections (**non-binding**);

Actions within the territorial sea or within ports:

- Seize, inspect, and freeze (impound) any vessel in its ports when there are reasonable grounds to believe that a vessel is transporting prohibited items or was involved in prohibited activities involving North Korea (**binding**);
- Seize, inspect, and freeze (impound) any vessel subject to its jurisdiction in its territorial waters if there are reasonable grounds to believe that the vessel transported prohibited items or was involved in prohibited activities involving North Korea (**non-binding**);
- Inspect cargo going to or from North Korea by sea, air, rail or road (**binding**).

Actions on high seas or in territorial waters/ports:

- Seize and dispose of any items the transport of which is prohibited by the UNSCR that is discovered in inspections (**binding**).

Registration and other flag State responsibilities:

- Immediately deregister a vessel if it refuses to comply with flag State direction to permit inspection on the high seas or to proceed to port for inspection (**binding**);
- Deregister, and cease to provide classification services for, any vessel that State has reasonable grounds to believe was involved in activities, or transported items, prohibited by UNSCRs and to deregister any vessel that is owned, operated or controlled by the DPRK as well as deny registration of vessels deregistered by other member states or flag registries for violation of sanctions (**binding**);
- Immediately deregister any vessel designated by the 1718 Sanctions Committee (**binding**).

Activities That Could Result in Designation:

OFAC designations:

U.S. statutory law requires the U.S. government to impose sanctions on any person determined to knowingly, directly or indirectly:

- Provide significant amounts of fuel or supplies, provide bunkering services, or facilitate a significant transaction or transactions to operate or maintain a vessel or aircraft that is designated under a North Korea-related E.O. or UNSCR, or that is owned or controlled by a person designated under a North Korea-related E.O. or UNSCR; or
- Insure, register, facilitate the registration of, or maintain insurance or registration for, a vessel owned or controlled by the Government of North Korea.

The U.S. government is also aggressively targeting for designation any person, among others, that:

- Facilitates a significant export to or import from North Korea; or
- Engages in the transportation industry of the North Korea economy.

If the Secretary of the Treasury determines that a foreign financial institution has knowingly facilitated a significant export to or import from North Korea, or knowingly facilitated a significant transaction on behalf of a North Korea-related blocked person, that institution may,

among other potential restrictions, lose the ability to maintain a correspondent account in the United States.

UN designations:

The Security Council or the Committee Established pursuant to UNSC Resolution 1718 (the 1718 Committee) can designate for targeted sanctions (asset freeze and travel ban for individuals) any individual or entity engaged in or providing support for, including through other illicit means, DPRK's nuclear-related, other weapons of mass destruction-related and ballistic missile-related programs.

In addition, the 1718 Committee may list maritime vessels for a variety of actions to be taken on them by all UN Member States. The Committee could list a vessel for a global port entry ban for engaging in activities prohibited by North Korea-related UNSCRs or transporting prohibited items from the DPRK, as authorized by paragraph 6 of UNSC resolution 2371 (2017). The Committee, as authorized by paragraph 12 of UNSC resolution 2321 (2016), could also list vessels for (a) deflagging, (b) direction to a designated port for inspection and follow-on actions, (c) a global port entry ban, and/or (d) an asset freeze (impoundment).

Finally, when States confront uncooperative vessels on the high seas about which they have information that provides reasonable grounds to believe that the cargos of such vessels contain items the supply, sale, transfer or export of which are prohibited by relevant UN Security Council resolutions, the 1718 Committee could take a variety of actions against those vessels. If a flag State of the vessel in question neither consents to inspection on the high seas nor directs the vessel to proceed to an appropriate and convenient port for the required inspection, or if the vessel in question refuses to comply with flag State direction to permit inspection on the high seas or to proceed to such a port, then the 1718 Committee shall consider designating the vessel for an asset freeze and other measures authorized in paragraph 12 of UNSC resolution 2321 (2016). Further, when the Committee makes the designation, the relevant flag State must immediately deregister that vessel. Any State that does not receive the cooperation of a flag State of a vessel suspected of carrying illicit cargo on the high seas must promptly submit a report to the 1718 Committee containing relevant details regarding the incident, the vessel and the flag State, which the Committee will publish on its website on a regular basis.

ANNEX 2

North Korean Vessels Capable of Engaging in Ship-to-Ship Transfers of Petroleum

<u>Ship Name</u>	<u>IMO</u>
SAM JONG 2	7408873
NAM SAN 8	8122347
SAM JONG 1	8405311
CHON MA SAN	8660313
CHON MYONG 1	8712362
KUM UN SAN	8720436
KUM UN SAN 3	8705539
PAEK MA	9066978
RYE SONG GANG 1	7389704
MU BONG1	8610461
SAM MA 2	8106496
YU JONG 2	8604917
YU PHYONG 5	8605026
YU SON	8691702
JI SONG 6	8898740
SAEBYOL/CHONG RIM 2	8916293
AN SAN 1	7303803
CHONG RIM 3	8665131
KU BONG RYONG	8983404
UN PHA 2	8966535
PO CHON	8848276
SONG WON	8613360
KANG DONG	8977900
TONG HUNG 5	8151415