

1 Executive Summary

1.1 Introduction

In the light of recent incidents in Australia (*Maersk Tacoma* and *Bunga Teratai Satu*) and overseas (*Erika*, *Treasure* and *Castor*), the Australian Maritime Safety Authority ("AMSA") and the Australian Association of Port and Marine Authorities ("AAPMA") determined to convene a National Conference and Workshop to discuss a range of Safe Haven and Salvage issues.

This Conference and Workshop was convened in Sydney on 19 & 20 February 2002 before an invited audience of representatives from Commonwealth and State Government marine safety and environmental agencies, port authorities, industry, providers of salvage services, P&I Clubs and the legal profession; a full list of attendees is included at Appendix A to this Conference Report.

The effectiveness of the Conference and Workshop was particularly enhanced by the attendance of the UK Secretary of State's Representative ("SOSREP") on Maritime Salvage & Intervention and senior representatives of members of the International Group of P&I Clubs.

1.2 Conference

The Conference on Day One heard speakers present a range of informative papers concerning safe haven and salvage issues such as safe haven policy and practice in Australia and UK, legal and liability implications arising from granting safe haven, current major salvage issues, salvage awards under LOF 2000 and SCOPIC together with the current IMO position on safe havens, salvage and wreck removal. These papers are summarised in Section 2 of this Conference Report and complete text of each paper is provided at Appendix B.

1.3 Workshop

The Workshop on Day Two had the objective of generating informed debate on the inter-related matters of Safe Havens and Salvage and was facilitated by Thompson Clarke Shipping Pty Ltd ("TCS"). In preparation for the Workshop, TCS developed a presentation that canvassed a range of relevant issues that were put to the forum including:

- Definitions of "casualty" and "safe haven"
- Seeking, granting and identification of safe havens

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- Relationship between safe haven and salvage
 - Application of LOF 2000 and SCOPIC
 - Salvage Capability

The full text of this workshop presentation is included at Appendix C.

A considerable volume of informative debate was generated during the Workshop across all issues canvassed. Rapporteurs for both the Safe Haven and Salvage issues were appointed, and the text of their summaries are included at Section 4 of the Conference Report.

Whilst it was not anticipated that a one-day workshop would be able to finalise or take decisions on the various issues, nonetheless it presented an opportunity for many misconceptions to be corrected, opinions voiced and issues brought to the fore in the course of discussion.

1.4 Workshop Summary

Whilst the subject of the Conference and Workshop was "Safe Haven", the consensus of the Workshop was that the term a "Place of Refuge" was to be preferred as this is a more accurate description of the situation and would be consistent with the terminology adopted by IMO. Accordingly, any future reference in this Conference Report to "Safe Haven" should be read as "Place(s) of Refuge".

In summary, the key issues arising from the Workshop were the need for:

- .1 greater cooperation and consultation between all parties: AMSA, State marine safety & environmental agencies, ports, salvors and industry, on the future provision of safe havens and the planning of Australia's salvage capability;
- .2 clarification of the respective powers of intervention of the Commonwealth and the States in directing a casualty to a safe haven;
- .3 adoption of improved, consistent processes to underpin the assessment of requests for safe haven through the development of national risk assessment guidelines for assessing requests for safe haven under the aegis of the National Plan Management Committee;
- .4 national safe haven risk assessment guidelines to be referred to ATC and ANZECC Ministerial Councils for endorsement;
- .5 completion of the assessment of Australia's salvage capability and, taking into account the outcomes of this report, take action to address issues such

as the cost of providing such a capability, the level of salvage expertise that exists in Australia, the release of harbour tugs by port authorities to perform salvage and the ability of Governments to requisition harbour tugs under powers of intervention should the need arise.

A Conference Report will be forwarded to AMSA and AAPMA to assist these organisations in determining the best means of progressing the development of effective Safe Haven and Salvage policy for Australia.

2 Conference Papers & Key Issues

The following papers were delivered on Day One of the Conference and Workshop. TCS has taken the liberty of summarising the key issues arising from each paper. However, all salient points may not have been incorporated into these summaries. Accordingly, the reader is cautioned to consult the complete texts of each paper that are provided in full at Appendix B to this Conference Report.

2.1 Safe Havens Policy & Practice in Australia

<i>Speakers:</i>	<i>David Baird & Ray Lipscombe</i>	<i>AMSA</i>
	<i>John Watkinson</i>	<i>Queensland Transport</i>
	<i>John Lord</i>	<i>Marine Safety Victoria</i>
	<i>Charles Black</i>	<i>Port of Launceston</i>

2.1.1 Policy & Practice in Australia (AMSA)

- Cwth Powers of Intervention may override the States on safe haven decisions in some circumstances
- Current policy developed during 1993 National Plan Review, including basic criteria for selecting safe havens
- No Cwth powers to requisition tugs, unless owned by salvors in possession of a casualty

2.1.2 Policy & Practice in Australia (Queensland)

- Qld safe haven guidelines require review
- Political considerations
- Use of "authorised officers" to grant safe haven
- Consultation with parties
- May designate safe havens in future

2.1.3 Policy & Practice in Australia (Victoria)

- Delegation to Director MSV
- Overriding Ministerial power
- Improved consultation required
- Local expertise
- Standardise processes
- Estimate surety amounts in advance
- Identify potential safe havens

2.1.4 Policy & Practice in Australia (Tasmania)

- Limitation on MAST powers outside port waters
- Casualty can anchor in State waters without requiring permission
- No formal consultative processes between State agencies
- Inability to secure indemnity for “Iron Baron” for port entry

2.2 Development of Incident Prevention, Salvage & Counter Pollution Response in the UK

Speaker: Robin Middleton SOSREP

- No direct Ministerial involvement
- Establishment of SOSREP role
- Trigger point for intervention
- Division of responsibilities
- No preconceived ranking of safe havens
- Provision of Emergency Towing Vessels (ETVs) financed by UK Government

2.3 Legal Implications for a State/Port granting a Safe Haven

Speaker: Tim Ellsworth Ebsworth & Ebsworth

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- Claims are inevitable
 - Formal recognition of Article 11 of the Salvage Convention of the need for consultative processes
 - Value in the vessel for security
 - Ports' duty of care acts as a disincentive to providing safe haven
 - Need for specific procedures/guidelines

2.4 Port Channel Blockage

Speakers: *Stephan Harper* *Norton White*
 Barton Phillips *Transport Mutual Services Pty*
 Ltd

2.4.1 Port Channel Blockage

- Requirement for procedures eg Port Marine Safety Code
- Give effect to Article 11
- Best defences for ports are to have appropriate procedures & guidelines

2.4.2 Risk Management Approach

- Risk assessment procedures
- Risk Transfer
- Insurance
- Consequences of reckless or intentional conduct
- Improve port risk management

2.5 Current Major Challenges & Issues in Salvage

Speaker: *Clay Frederick* *Adsteam Harbour*

2.5.1 Options for Australia

- Strategic placement of salvage-ready tugs
- Provision of Emergency Towing Vessels

- Reliance on nearest dedicated salvage tugs

2.5.2 Australian Salvage Capability

- Purpose designed salvage-capable tugs
- Strategic positioning
- Trained crews and experienced management
- Immediate response capability
- Revenue base to support the capability

2.5.3 Capability Problems

- Declining professional base of trained salvors
- Port-restricted tugs
- Conflicting priorities delaying tug availability
- Readiness of ship owners to engage an "opportunity salvor"

2.5.4 Capability Solutions

- Recognise the problems
- Prioritise salvage over other tug demands
- Give "cure" equal attention to "prevention"
- Allow commercial environment to support salvage capability
- Approve only salvors who meet essential criteria

2.6 Salvage Awards under LOF 2000 & SCOPIC

Speaker: *Graham Daines* *Thos Miller P&I Ltd*

- By not removing bunkers may result in a reduced award
- 2 year trial for SCOPIC
- SCOPIC invoked in relatively few casualties initially (1999: 14 from 123)
- Incidence is increasing as more experience gained with its operation (2001: 26 from 102)

- SCOPIC provides real advantages: structured chain of communication, certainty over expenditure, improved cashflow, early resolution and knowledge/influence over events

2.7 Case Studies – Application of LOF 2000, SCOPIC & Alternatives

Speakers: Neil Edwards Adsteam Harbour
 Robin Middleton SOSREP

- Relatively few LOFs in Australia as majority are towage agreements
- Use of Coastguard Agreements for Salvage & Towing (CAST) type towage agreements
- SOSREP type powers to direct
- Donaldson: ports must wait for tugs to return from salvage
- UK Government underwrites port's loss of business if tugs are called away

2.8 Current IMO Position on Safe Havens, Salvage & Wreck Removal

Speakers: Roger Timms AMSA
 Michael Julian AMSA

- Development of Operational Guidelines
- Legal Committee role less immediate
- Identify & resolve national issues
- Promote Australia's national position
- No preconceived ranking of safe havens
- Unrealistic for global designation

3 Facilitated Workshop Presentation

A facilitated workshop was conducted on Day Two of the Conference under the guidance of TCS facilitators Chris Dayton and John Francis. The workshop built upon the framework provided by the papers presented on Day One and on a workshop presentation developed by TCS to generate discussion amongst participants. The full text of this workshop presentation is included at Appendix C, which may provide a useful reference document on issues to be addressed in any future development of national safe haven guidelines or in the assessment of Australia's national salvage capability. An outline of this workshop presentation was as follows:

3.1 Safe Havens

3.1.1 Definition of a Casualty

- "A ship and/or its cargo on the high seas and in danger"
- Intervention Convention definition of a "Maritime Casualty"

3.1.2 Definition of a Safe Haven

- Terminology: safe haven, port of refuge, place of refuge, place of safety
- IMO preference for a "place of refuge"

3.1.3 Seeking a Safe Haven

- Appropriate party to make the request
- Appropriate agency to make the request to
- Time required to assess a request for safe haven
- Action required of a master requesting safe haven

3.1.4 Granting a Safe Haven

Powers of Intervention

- Cwth Powers of Intervention to move a ship to a place of refuge in coastal waters
- Adequacy of State Powers of Intervention

- Adequacy of Natplan arrangements for safe havens
- Use State emergency management legislation

Intervention Decision

- Who makes the decision
- Extent of Ministerial involvement
- Appointment of a National or State SOSREP equivalent

Salvage Convention

- Application of Article 11 of the Salvage Convention
- Development of formal consultative guidelines
- Identification of Safe Havens

3.1.5 Identification of Safe Havens

- Pre-designated or Case by Case
- Validity of the 1993 Natplan decision on assessing safe havens
- National agreement on assessing safe havens
- National agreement on "no go" areas
- Consistent risk assessment guidelines
- Environmental & social factors
- Political factors to be considered in granting/refusing safe haven
- Communication of decisions on safe havens
- Time taken to undertake assessment of suitability of a safe haven

3.2 Salvage

3.2.1 Relationship between Safe Haven & Salvage

- Preserving safety of life of both ship's crew & salvage crew
- Whether a Castor situation would ever apply in Australia

- Assurances from the coastal states to salvors that they could find a place of refuge
- Obligations, if any, of coastal states to provide salvors with a place of refuge
- Salvors OH&S obligations to the salvage crew

3.2.2 LOF 2000

Place of Safety

- "Place of Safety"
- "Safe Condition"
- Should an LOF be entered into without assurance of a place of safety
- Provision of security by a P&I Club to port authority before providing safe haven

Environmental Damage

- Exposure of salvor to civil or criminal proceedings in the event of pollution
- Respective liabilities of salvor and coastal state when the salvor is refused safe haven and pollution occurs as a consequence of that decision
- Advice from salvor in minimising environmental impact

3.2.3 SCOPIC

- Experience with SCOPIC
- Code of Practice between ISU and International Group of P&I Clubs on SCOPIC
- Circumstances where a P&I Club would not provide security for a casualty to enter port
- Would a classification society suspend class of a casualty whilst at sea
- Would a flag state cancel survey of a casualty whilst at sea

3.2.4 Salvage Capability

Kerry Dwyer presented a summary of the findings of a report commissioned by the Australian Maritime Group into Australia's Salvage Capability.

Hardware

- Number of salvage tugs in Australia
- Optimum location of salvage tugs relative to the risk of casualties occurring
- Release/requisition of harbour tugs to perform salvage

Personnel

- Sufficient local technical and management expertise to provide an effective salvage capability
- Effective sharing of salvage experience between all parties
- Means to make the most of limited salvage expertise
- Should Australia be a leader or a follower in developing salvage policy & practice
- Appropriate forum for developing a national agreement on safe havens & salvage

Cost

- Who should pay for Australia's salvage capability

Alternatives

- Sustainability of Adsteam/United Salvage's virtual monopoly of salvage services
- Is this such a bad thing
- What is Australia's exposure if Adsteam withdrew from salvage
- Alternative salvage providers: offshore, government ETVs, tugs of opportunity

4 Rapporteur Summaries

Rapporteurs were appointed as follows to take notes of the issues and decisions arising from the Workshop as follows:

- **Safe Havens:** Tim Turner Port of Newcastle
- **Salvage:** Dale Cole Dale Cole & Associates

The Rapporteurs reported back to the Workshop on their respective subjects in the following terms:

4.1 Rapporteur Summary: Safe Havens

4.1.1 Issue: Definition & Terminology

- Maritime casualty – concept of casualty needs to recognise threat to ship and Coastal State
- Generally recognised in national and State/NT legislation
- Clear preference for “place of refuge” for international consistency

4.1.2 Issue: Who and How to Make a Request for a Place of Refuge?

- Who ever is in charge of the ship at the time
- Need to maintain flexibility in light of prevailing circumstance
- Coastal State Authorities need to be forward looking to provide options and to consider worst case scenario

4.1.3 Issue: Who Are You Going to Call?

- Clear preference for a single central point of contact – MRCC, but recognise need for flexibility (Owner, State Maritime Authority, Port Authority, etc)
- Note difficulty with multiple points of contact on both sides

4.1.4 Issue: Power of Intervention

- Underlying Commonwealth power, but in practice rely on cooperation/consultation with States/NT & Ports to achieve agreed solutions

- Maybe a requirement to invoke Commonwealth or State power to protect the port or salvors from liability
- Clarity on issue of liability if power invoked

4.1.5 Issue: Requisition of Tugs

- Commonwealth intervention powers not applicable
- Some States can requisition tugs under emergency management powers
- Is there a need to change the legal position?

4.1.6 Issue: Decision to Intervene

- Some attraction to a SOSREP type person, but recognise Ministerial role
- Keep Ministers informed and seek involvement in major decisions, particularly if liability is attached to the Government/Agencies/State Corp., etc
- Predisposed to help but must protect the National/State interest

4.1.7 Issue: Formal guidelines for consulting during intervention matters (Salvage Convention - Article 11)

- General consensus that consultation essential and formally documented processes desirable (cooperation approach)
- Particular need to define hand over arrangements and bring statutory agencies into decision making loop
- Use of NatPlan processes

4.1.8 Issue: Identification of Place of Refuge

- Reconfirm '93 NatPlan decision to determine safe havens on a case by case basis rather than pre-designated
- Any place may be a potential place of refuge
- Need to assess environment, social & cultural traits
- Marine/Port authorities should undertake risk assessment analysis to assist rapid decision making

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- Clear desire for national consistency in guidelines and evaluation systems
 - Good decisions depend on good preparation

4.1.9 Key Messages

- Cooperation and consultation
- Preparation and planning
- Provide for political involvement in process
- Need to clarify legal issues
- National guidelines for risk assessment and evaluation systems

4.2 Rapporteur Summary: Salvage

4.2.1 General Comments

- Tug options (dual purpose, ETV, dedicated)
- Standard mobilised/demobilised call-up contract
- Legislation for government to underwrite the loss of port business
- Importance of the Cmlth/State authority to check insurance credentials of vessel
- *Castor* incident unlikely to occur in Australia
- Standard letter of comfort (P&I coverage)
- Cmlth/States to have power of direction for casualty after assessment of risk

4.2.2 Salvage Capability

- High traffic areas are leanest in special salvage capability
 - 50% coast covered
 - Expected 50% increase in shipping activity over next 10 years
- International assistance is an option

- Opposing views on merits of tendering for harbour tug services
- Some offshore support vessels have salvage capacity
- Tugs are only one element of salvage capacity
- Cost benefit analysis conducted by UK for ETVs

4.2.3 Personnel

- Salvors' age
- Gap is in management of salvage not technical expertise
- Companies claim to be addressing these issues

4.2.4 Cost of Salvage Capacity

- Not just the cost of the tug, also cost to the port
- Potential polluters or port users to pay for salvage capability?
- Introduction of a levy?
- Need to balance cost with risk
- Opposing views on whether cost of salvage capacity is being passed onto ships
- Consider future requirements (tugs to be replaced in 10 years)
- Let the market decide who provides salvage capacity
- Need to determine what Australia wants and then who should pay

4.2.5 Requisition of Assets

- Is there a need for Commonwealth/States to have legislative powers to requisition assets, including tugs
 - Powers should be restricted along the lines of Intervention Powers
 - Consider adopting standard hire rates, similar to UK
 - Consider NZ legislation as model

5 Workshop Summary

The following is the substance and intent of the Facilitator's conclusion and recommendations for further action that was put to the Workshop:

No elaboration by the Facilitator on the summaries presented by the Rapporteurs is considered necessary as these were comprehensively made and speak for themselves.

In summary, the key issues arising from the Workshop were the need for:

- .1 greater cooperation and consultation between all parties: AMSA, State marine safety & environmental agencies, ports, salvors and shipping industry, on the future provision of safe havens and the planning of Australia's salvage capability;*
- .2 clarification of the respective powers of intervention of the Commonwealth and the States in directing a casualty to a safe haven;*
- .3 adoption of improved, consistent processes to underpin the assessment of requests for safe haven through the development of national risk assessment guidelines for assessing requests for safe haven under the aegis of the National Plan Management Committee. Such proposed guidelines might usefully include reference to:*
 - the obligation under Article 11 of the Salvage Convention for co-operation;*
 - transfer of responsibility for the casualty from one jurisdiction to another;*
 - uniform risk assessment criteria for assessing safe havens;*
 - process for making a request for safe haven;*
 - process for granting a casualty safe haven;*
 - appropriate security documentation and undertakings required by a port or other agency before granting a casualty safe haven.*

- .4 *national safe haven risk assessment guidelines to be referred to ATC and ANZECC Ministerial Councils for endorsement;*
- .5 *the Australian Maritime Group to complete its assessment of Australia's salvage capability and, taking into account the outcomes of this report, take action to address issues such as the cost of providing such a capability, the level of salvage expertise that exists in Australia, the release of harbour tugs by port authorities to perform salvage and the ability of Governments to requisition harbour tugs under powers of intervention should the need arise.*

A Conference Report will be forwarded to AMSA and AAPMA to assist these organisations in determining the best means of progressing the development of effective Safe Haven and Salvage policy for Australia.

6 Media Release

The following is the text of a media release issued on 20 February 2002 concerning the outcome of the Conference and Workshop that was approved by the organisers: AMSA and AAPMA:

Australian Ship Salvage and Places of Refuge

The Australian Maritime Safety Authority and the Association of Australian Ports and Marine Authorities have called for a combined Federal, State and maritime industry approach to ship salvage and the provision of places of refuge for casualty ships.

The drafting of national risk assessment guidelines for providing places of refuge will be developed with input from the maritime industry for consideration by Federal and State Governments.

These guidelines will have implications for the updating of salvage and ship refuge recommendations in the National Plan to Combat Pollution of the Sea by Oil and other Noxious and Hazardous Substances.

A conference and workshop of government maritime and port authorities and maritime industry representatives from Australia and overseas, held in Sydney this week discussed the practical and legal implications of ship refuge access and salvage operations around the Australian coastline.

Key issues covered Commonwealth and State powers of intervention, legal implications for all organisations involved in a salvage operation and criteria for selecting and identifying places of refuge.

Attention also focussed on the availability, capability and future funding of sea-going tugs in strategic ports around Australia for salvage purposes and the power to requisition them. This was particularly so when lives were at risk and the environment endangered.

Other matters included major salvage challenges in the application of awards under Lloyds Open Forum 2000 (LOF) and Special Compensation P and I Clause (SCOPIC).

The conference workshop was facilitated by Thompson Clarke Shipping.

The Conference and Workshop received good coverage in the shipping press, particularly Lloyd's List DCN, copies of reports are included at Appendix D.

APPENDIX A

ATTENDEES

APPENDIX B

CONFERENCE PAPERS

APPENDIX C

WORKSHOP PRESENTATION

SAFE HAVENS

Definition of a Casualty

Let us examine what we mean by the subject of this workshop:

The ship that is seeking a safe haven and salvage services.

In the context of salvage, **a casualty**, is a ship and/or its cargo on the **high seas** and in **danger**.

In this context, **high seas** includes tidal waters.

Danger covers any situation which gives rise to a reasonable fear that a ship or its cargo may suffer damage or loss. This may involve some immediate peril or prospective threat.

However, the danger must be **objectively apparent**. That is there must appear from an objective point of view to be a danger to the ship. Provided that the danger is apparent, it does not matter that the danger is in reality non-existent.

In a leading salvage case it was found that:

"It is not necessary that the distress should be actual or immediate, or that the danger should be imminent or absolute; it will be sufficient if, at the time the assistance is rendered, the ship has encountered any damage or misfortune which might possibly expose her to destruction if the [salvage] services were not rendered."

Lushington *The Charlotte* 1848

Danger might include:

- Bad weather and rough seas leading to a vessel foundering
- Hull or machinery damage sustained by a vessel
- An accident sustained by a vessel such as fire or explosion
- Shifting cargo
- Impaired stability
- Collision
- Grounding of a vessel

such that **without assistance** the ship and/or its cargo are **in peril**.

However, under such a broad definition, **danger** might also include:

- A vessel has lost its way or is unaware of local navigation hazards or conditions
- A vessel is unable to navigate because of illness or incapacity of the crew

In the vast majority of salvage cases the danger facing a vessel is some physical peril. However, cases show that there is a danger to the vessel if there exists **detriment to the vessel's owner**. For example, if a ship is immobilised, notwithstanding that it will not suffer any physical harm.

Danger can therefore be a matter of degree that has important implications for granting safe haven in terms of the port's exposure to loss or damage.

Definition of a Safe Haven

This conference is concerned in part with the granting of **Safe Havens**.

However, it is apparent that not everyone is comfortable with this expression.

- Safe Haven,
- Port of Refuge,
- Place of Refuge,
- Place of Safety

are these simply different terms to describe the same concept?

Or are there important differences in the terminology?

Does it matter what we call it provided that we all understand to what we are referring to a ship, its crew and its cargo in danger and looking for a suitable location to gain assistance to preserve the safety of that ship, its crew and its cargo?

A "**port of refuge**" is a commercial shipping term in common usage where a vessel deviates to a port in order to effect repairs that will then enable it to continue on its voyage.

Whereas "**safe haven**" would appear to equate more to a vessel closing the coast in order to:

- Improve the survival and rescue opportunities for the crew

- Seek shelter whilst appropriate assistance is sought and arranged

Whereas coastal states would seem to have no problem with providing a safe haven in order to save life, it is accepting the ship and its cargo that some overseas coastal states would appear to be having some difficulty with.

For its part, IMO have elected to refer to a **“place of refuge”** in order to distinguish a port from simply a sheltered water location eg Sealers Cove for *Maersk Tacoma*.

Secretary General O’Neil recently referred to **places of refuge** in the following terms:

“... I intervened to move the language of the debate away from “ ports of refuge,” which I believe is both an emotive and a misleading term.

It is important that we should separate the matter of a port from the issue. To be clear: a **disabled vessel** such as the *Castor* **does not necessarily need to enter a port**.

When dealing with ships in distress, the requirement is to find them an area of sheltered water where the situation can be stabilised, the cargo made safe and the salvors and authorities can evaluate what further steps are necessary without the pressure of a crisis hanging over their heads.

The concern of port authorities that they should not be exposed to the risks of pollution, fire or explosion is well understood and is not in any way challenged.

But equally, this is an issue which will not go away and must be addressed. We cannot continue to permit a situation to unfold in which salvors dealing with a damaged vessel containing a potentially hazardous cargo have nowhere to go.”

This statement by Secretary-General O’Neill raises important jurisdictional distinctions in the granting of a safe haven as between a **gazetted port** and a **sheltered coastal area** that need to be explored.

Additionally, IMO’s reference to a **“place of refuge”** would appear more consistent with a **“place of safety”** set out in the LOF that might not necessarily refer to a **“port”** .

The danger posed by a casualty can be a matter of degree that has important implications for granting safe haven in terms of the port’s exposure.

If the casualty is only a little bit dented then it’s probably OK to come in, but any whiff of any potential major structural damage or pollution potential what then?

Let us summarise:

Places of Refuge

- Is it more appropriate to refer to a **place of refuge** or **place of safety** in future rather than to a safe haven or port of refuge?
- Do you agree with Secretary-General O'Neil's view that we are dealing with two distinct types of refuge ie that provided by **sheltered coastal waters** to possibly stabilise a vessels' condition such as removing cargo and that provided by a **port** to effect repairs?
- Do we need to agree on terminology?

Seeking a Safe Haven

Having arrived at some sort of consensus about what is meant by a "safe haven", let us turn our attention to the **"who"** and **"how"** of making a request for a safe haven.

Is it the Master? The vessel owner? The salvor?

For example:

- The case of the *Erika* where from my limited understanding the Master withdrew his Mayday and Pan messages after discussions with his owner.
- The case of the *Castor* where the Master made 3 requests and the salvor made 4 requests to various coastal states for a safe haven.

To whom is the request made?

Phone in hand, big crack across the foredeck but who are you going to call?

My feeling is that the Master of a foreign flag vessel in difficulties will not appreciate the intricacies of our Federal system, the role of the various primary or lead agencies involved.

How long is it going to take for these parties to assess a request for safe haven?

I'm in trouble NOW and I want an answer NOW.

In this regard, a Drafting Group of the Sub-Committee on Safety of Navigation at IMO is currently developing operational guidelines for the provision of places of refuge including:

"actions a master of a ship should take when in need of a place of refuge"

This includes actions on board and actions required in seeking assistance from other ships in the vicinity, salvage operators, flag State and coastal States.

This IMO initiative would seem to offer some useful guidance that a Master should take in the future when seeking a safe haven.

Unless I've missed something, up until now the current State safe haven guidelines do not appear to address the actions to be taken by **the ship** in any detail.

Let us get some of these issues out on to the table:

Requesting a safe haven

- Who should make the request for a safe haven?
- Does the owner have a role or should this request be made solely at the discretion of the Master?
- In Australia to whom should the request for a safe haven be directed to?
- Should a request for a safe haven be directed to a central coordinating Commonwealth agency such as AMSA through MRCC who would then sort it out with the appropriate State marine administration?
- What are the legal responsibilities of the Master and others, particularly the owner, in seeking safe haven? Think about the Erika.

We'll leave aside the granting of a safe haven for the moment and concentrate on the request.

Commercial considerations arising out of a request for a safe haven

- Are there any terms in a contract of H&M insurance requiring the Master to seek a safe haven in order to preserve the vessel?
- Are Master and/or owners in breach of a bill of lading or charter party if the Master fails to seek a safe haven in order to preserve the cargo?

Granting a Safe Haven

Powers of Intervention to direct a vessel to or from a safe haven

The Commonwealth has extensive powers under the Protection of the Sea (Powers of Intervention) Act to intervene on the **high seas** where there has been a maritime casualty and there is grave danger to the Australian coastline from pollution or the threat of pollution.

The most significant power for the purposes of this conference is the power to move the ship to another place.

We understand that the Office of International Law, Commonwealth Attorney-General's Department considers that this power extends to moving the ship to a

place of refuge **even against the wishes of the port authority or State Government concerned.**

- Does that constitutional advice accord with that received by State marine authorities?
- In a practical sense, is this extension of Commonwealth powers from intervening on the high seas **that represents a serious environmental threat** into granting a vessel safe haven in State waters satisfactory from a State perspective?

The Commonwealth is granted similar powers for intervening in relation to prescribed ships in **coastal waters** and may also be able to move a vessel to a safe haven against the wishes of the relevant State Government.

- Given the intention of the Act is not to derogate from State laws, are the intervention powers of the Commonwealth in coastal waters satisfactory from a State perspective?

In Victoria, the Marine Act 1988 provides the Minister with wide powers to require action to be taken in respect of a casualty, including its removal to a specified place.

- Are current State laws adequate in granting powers to order the removal of vessels to safe havens without recourse to AMSA and Commonwealth powers?
- Are National Plan arrangements adequate in respect of providing guidance on safe haven matters?
- Can States use Emergency Management legislation to requisition port assets such as tugs and repair berths?

Intervention Decision

The issue to be addressed is whether or not it is appropriate for a Minister to become involved in decisions on safe havens or if these decisions are better left to individuals with a specialist expertise that possess substantial independence and are not part of the political process.

- Who makes the decision in your State to grant or refuse a safe haven?
 - Harbour Master?
 - State marine authority?
 - The responsible State Minister?
 - The Minister's delegate or representative?
 - Commonwealth?
- Is it appropriate for the Minister to intervene or should this decision be in the hands of a National or State SOSREP equivalent?

- Can the Commonwealth or State prevent a ship from seeking a sheltered coastal waters location rather than a port to effect repairs or transfer cargo?

It is my understanding that in the UK the SOSREP has the power to override a decision made by the Harbour Master of a port and to direct the Harbour Master to take the ship in.

- Would port authorities accept such a direction from their state marine administration or from the State Minister?
- Alternatively, would a state marine administration or the responsible State Minister direct a port authority not to take a ship in?

Salvage Convention

Article 11 of the Salvage Convention provides that:

"A State party whenever regulating or deciding upon matters relating to salvage operations such as **admittance to ports** of vessels in distress or the provisions of facilities to salvors, take into account the **need for co-operation** between salvors, other interested parties and public authorities in order **to ensure the efficient and successful performance of salvage operations** for the purpose of saving life or property in danger as well as preventing damage to the environment in general."

This article does not have the force of law in Australia (s.315 Navigation Act) although we note that AMSA is required perform its functions in a manner consistent with the obligations of Australia under any agreement between Australia and another country. (s.7 the Australian Maritime Safety Authority Act).

- Has AMSA developed formal guidelines for consulting with interested parties in salvage operations?
- To what extent should the States also develop formal guidelines for consulting with interested parties on salvage operations, including admittance to ports?

Identification of Safe Havens

I detect two schools of thought on the identification of safe havens:

- Pre-designated, or
- Case by case assessment

The background to this issue in Australia is interesting:

- Safe havens were first addressed by the 1993 National Plan Review.

- It is understood that industry representatives argued that pre-determined areas and ports should be selected so that when a casualty occurs there is no delay as to where salvors can tow the damaged vessel.
- Suitable contingency plans could be drawn up in advance for the safe haven to prevent pollution.
- It is understood that some State Governments opposed this approach considering that to flag the issue may result in lengthy and involved discussions with parties that might not have an appreciation of the criticality of a marine casualty.
- Further, it was argued that such discussion in advance of an incident would inevitably lead to:
 - access to some ports being refused,
 - that to seek approval from outside the State Committee would be counter-productive, and
 - invite considerable debate on a sensitive issue which might never arise.
- Chances of obtaining approval for a port or coastal area to be used as a safe haven were considered far greater at the time of an incident, when Governments and local authorities could be assured by the State Committees that appropriate contingency plans were in place prior to the casualty approaching the port or area.
- On this basis a number of States developed guidelines of varying degrees of detail against which to assess requests for safe havens, particularly Queensland, NSW and WA.

However, the main question I wish to pose to you today is whether the rationale adopted in 1993 NOT to have pre-designated safe havens is still valid or appropriate?

Do you still hold the line that it is all too hard and too difficult to obtain prior agreement on designated safe havens and that it will all be all right on the night?

It also seems to me that in making an assessment of the risks involved in declaring a safe haven that many of the defined **environmental and social factors** involved are essentially fixed or as near to it as makes no difference eg

- threat to public safety
- designated environmental areas eg marine parks, RAMSAR wetlands
- repair facilities available
- salvage capacity

These are not matters that change dramatically from year to year or between casualties.

The **variables** are more concerned with the vessel:

- volume of pollutants onboard
- type of pollutants onboard
- risk of escape of these pollutants
- extent and type of damage sustained by the vessel
- will the vessel hold together
- ability of the vessel to manoeuvre
- weather conditions
- time of entry

In these circumstances why is it inadvisable not to designate safe havens before the event?

Take Victoria for example that probably only has Portland, Port Phillip, Westernport and Corner Inlet that could come under consideration as a safe haven.

It's not a big choice, so why can't at least some safe havens around the Australian coast be designated pre- rather than post the event?

How long will it take to go through the risk assessment process?

What are the political sensitivities that will need to be addressed before a safe haven is designated to receive the vessel?

Let us summarise:

- The \$64 question then is should safe havens in Australia be pre-designated or assessed on a case by case basis?
- Is the rationale adopted in 1993 not to designate safe havens still valid?
- Should there be national agreement on pre-designated safe havens?
- Alternatively should there be national agreement on potential safe havens that are assessed as "no go" areas?
- Should there be a consistent set of guidelines in Australia for undertaking the risk assessment that underpins the designation of a safe haven?

- What are the environmental and social factors to be considered in designating a safe haven?
- What notice should be taken of Article 11 of the Salvage Convention that stipulates the **need for co-operation** between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations including **admittance to ports**?
- What are the political constraints that apply to designating a safe haven? Should these be removed from the equation by having an independent SOSREP equivalent in each State? Could this be the State Oil Spill Commander?
- Given the Commonwealth's Powers of Intervention on the high seas should there be a single Australian SOSREP equivalent to make this decision who could override the wishes of the States?
- How and when should decisions on safe havens be communicated to Government, local authorities and the public?

SALVAGE

Relationship between Safe Havens & Salvage

It seems to an outsider like me that salvage is as much – **if not more** - about saving the lives of the crew of a vessel in distress and in preserving the safety of the salvage crew in doing their job.

It is not just about salvaging the vessel and its cargo.

We need to give every consideration to the safety of life by minimising the exposure of both the vessel's crew and the salvage crew to danger when salvaging a vessel and its cargo.

This would seem to require coastal states to provide safe havens for the ship's crew to be evacuated and for the salvor to secure the vessel and minimise the threat of pollution.

This seems to me to be the nexus between safe havens and salvage.

However, this not a proposition that would necessarily appear to be accepted by many coastal states as evidenced by the treatment of the *Castor*.

In seeking a safe haven for this vessel, salvors were forced to tow the casualty over 2,000 miles to find a safe haven in which to perform a ship-to-ship cargo transfer.

In Australian terms that represents a tow from Fremantle to Sydney.

The main questions that I want to put to you today are these:

- Would a similar situation to that of the *Castor* ever apply in Australia where a vessel is passed:

from port to port, say between Sydney and Newcastle?

from a port to coastal waters and into State jurisdiction, say from Fremantle to WA State waters

from one State jurisdiction to another, say from Tasmania to Victoria

from Commonwealth to State jurisdiction, say in the GBR

from a neighbouring coastal state into Australia territorial waters, say from Indonesia or PNG?

- In the event of a casualty in Australian waters, what assurances are out there for salvors and owners that a ship in danger can find a safe haven at a

location that is most proximate to the vessel in order to be able to save life and property and minimise the safety risk of the salvage crew?

- Do Australian jurisdictions accept that they have an obligation to provide a salvor with a safe haven for a casualty?
- What are the obligations of the salvor and the salvage master for taking measures to preserve the health & safety of the salvage crew?
- What is the liability of the port or coastal state that refuses a salvor safe haven, if a member of the salvage crew is either injured or killed because a safe haven has been refused?
- Using its Powers of Intervention could AMSA direct a vessel located in the waters of one State to a safe haven in an adjacent State say from Tasmania to Victoria?

LOF 2000

Under LOF 2000 the Contractors (salvors) basic obligation is **“to use their best endeavours to save the property ... and to take the property to a place of safety”**; the location of which may or may not be agreed at the time of entering into the LOF.

Further, “ the owners of the property (the ship and its cargo) shall cooperate fully with the Contractors (salvors) in obtaining entry to the place of safety...”

Most importantly, the salvage contract is not deemed to have been performed until **“the property is in a safe condition in the place of safety ...”**

Property shall be regarded as in a **“safe condition”** if;

- the Contractors are not obliged to remain in attendance to satisfy the requirements of any port or harbour authority, governmental agency or similar authority and
- the continuation of skilled salvage services from the Contractors or other salvors is no longer necessary to avoid the property becoming lost or significantly further damaged or delayed.

It is also noted that “ while performing the salvage services the Contractors (salvors) shall use their best endeavours to prevent or minimise damage to the environment” .

As I understand it the argument for granting a place of safety to a vessel that is being salvaged is that this will significantly reduce the potential for environmental damage **overall** notwithstanding that there may be significantly increased potential for **localised** damage.

Further, that to transfer cargo and otherwise stabilise the condition of the salvaged vessel in a more benign, sheltered environment by taking it out of a crisis situation will enable more effective pollution prevention measures to be taken to prevent environmental damage.

Look at what happened to the *Treasure & Sea Empress*.

Place of Safety

- What constitutes a place of safety such as to render the vessel being salvaged in a "safe condition" ?
- What happens when the owner and/or salvor cannot secure a place of safety with the coastal state?
- Should access to a place of safety be obtained before an LOF is entered into?
- What are the implications for the salvage award if the salvor is prevented by the coastal state from placing the vessel **in a safe condition in the place of safety**?
- Should an owner be obliged to indemnify the port authority or coastal state in order to discharge its obligation to the salvor under an LOF to "cooperate fully with the Contractors in obtaining entry to the place of safety" ?
- What indemnities do port authorities require of owners and/or salvors seeking a place of safety?
- Should the vessel's P&I Club be obliged to issue a back-to-back indemnity to the owner?
- In practice how long would it take to have all the indemnity ducks in a row, bearing in mind that it's 0200 on a dark & stormy Sunday morning and the situation onboard is worsening by the hour?

SCOPIC

SCOPIC is a relatively recent development that stands for **Special Compensation P&I Club Clause** that is now incorporated into LOF 2000.

As explained so ably yesterday by Graham Daines, Article 14 of the Salvage Convention entitles a salvor to Special Compensation if he has carried out salvage operations in respect of a vessel and its cargo that threatened damage to the environment, but the value of the salvaged property is insufficient to provide for a normal salvage award.

This Special Compensation was originally restricted to salvage services in " coastal waters and areas adjacent thereto" . However, this geographic restriction has been lifted by SCOPIC.

By all accounts this new initiative is working well with all parties singing its praises, including salvors and the P&I Clubs.

Like a good family movie, it offers something for everyone:

- Salvor has US\$ 3 million security + a generous fixed scale of charges & 25% uplift on expenses
- Shipowner and P&I Club know their exposure and have greater control of the salvage operation through a Shipowner's Casualty Representative.
- Underwriters obtain a 25% discount on the difference between SCOPIC and the normal salvage award if the normal salvage award is greater.

However, whereas SCOPIC has been invoked in a considerable number of casualties since it was first used in September 1999, I am unsure if the awards are living up to expectations.

- Could I ask what the experience with SCOPIC has been?

One issue concerning SCOPIC that might be worth exploring as it relates to safe havens is:

Code of Practice between ISU and International Group of P&I Clubs

Clause 5 requires:

" In the event that security is required by a port authority or other competent authority for potential P&I liabilities in order to permit the ship to enter a port of refuge or other place of safety, the P&I Clubs confirm that they would be willing to consider the provision of such security subject to [certain] **provisos** ... and subject to the reasonableness of the demand."

However, clause 4 states that:

" whilst they **expect** to provide security in the form of a Club Letter ... **it is not automatic.**"

Specific reasons for refusal to give security to the Contractor include:

- Non-payment of calls
- Breach of warranty rules relating to classification and flag state requirements
- Any other breach of the rules allowing the Club to deny cover

Further, it is expressly stated that it is not intended that this Code of Practice should have any legal effect.

It is apparent that there is considerable opportunity for the Club to refuse security for a vessel to enable it to enter a port of refuge.

- Under what circumstances would a P&I Club not provide security?
- Would a classification society contemplate suspending class on a vessel that had suffered structural or mechanical failure at sea and was now seeking a port of refuge to undertake repairs?
- Would this amount to a breach of warranty rules such that the P&I Club could refuse to provide security?
- Similarly, would a flag state ever contemplate cancelling a vessel's survey status in similar circumstances?

Salvage Capability

Australia's ability to protect the marine environment from the impacts of casualties has as much to do the available salvage capacity as anything else.

I don't see how you can treat salvage as something distinct from marine pollution prevention and response.

If the salvor can keep the cargo or bunkers inside the ship or safely transfer it then this sounds like the way to go.

But does Australia have an adequate salvage capability?

How and where should this capability be deployed?

What are the impediments to having this capability effectively deployed?

What elements comprise this capability?

Who should fund this capability?

Kerry Dwyer overview of the situation.

Let us examine some of these issues:

Hardware

- Do we have sufficient salvage tugs in Australia?
- Are they located in the optimum location relative to the risk of casualties occurring?

- Are port authorities willing to release harbour tugs to perform salvage if this is likely to interfere with port operations?
- How is the conflict between ongoing tug availability in a port and the need to respond to salvage resolved?
- Can the Commonwealth or the States order or requisition a harbour tug to attend a casualty against the wishes of the port authority? See Emergency Management Act (Vic)

Resources

- Other than within United Salvage, does Australia have sufficient indigenous expertise for effectively managing salvage situations to be able to satisfactorily resolve the sorts of issues that are under discussion today?
- Does United Salvage have ready access to trained and experienced salvage crews to be able to quickly deploy these to a casualty anywhere around our coastline?
- How for example is Queensland's experience with the Bunga transferred to other State jurisdictions under our Federal system?
- Should Australia adopt a national approach to Salvage similar to NATPLAN and oil pollution so that we can more effectively pool our resources and expertise?
- Given the abundance of grey hair around, does United Salvage and other response organisations have appropriate succession planning in place in order to pass on the very specialist expertise in salvage matters that is required?
- Do we simply take our salvage policy & practice lead from IMO or from coastal states such as the UK?
- What is the appropriate forum in Australia to develop a national agreement or policy on Safe Havens & Salvage? Australian Maritime Group? National Plan Management Committee?

Cost

My limited understanding is that a harbour tug does not necessarily make a salvage tug.

For these reasons, tugs like the *Gurrong* in Melbourne and *Austral Salvor* in Brisbane have been built to be capable of performing a dual role of harbour towage and salvage.

However, these specialist vessels require significantly greater capital investment than a cheap & cheerful harbour tug.

My questions are:

- Are harbour towage charges inflated in order to meet the required Return On Capital Employed on these more costly vessels?
- Is it equitable for users of harbour towage services to subsidise the employment of salvage tugs in performing routine port operations?
- If not port users, who should be subsidising this enhanced salvage capacity? Government? Industry via a tonnage levy?

Alternatives

- How does Australia break away from its almost total reliance on United Salvage/Adsteam to provide salvage services?
- Do we necessarily want to challenge these established arrangements given the lack of opportunities for salvors in Australia compared to Europe?
- What would be the upshot if Adsteam decided that they did not want to be involved in salvage anymore?
- What are the alternatives
 - Greater reliance and encouragement for offshore operators to participate in salvage?
 - Tugs of opportunity?
 - Government owned salvage tugs?

Salvage Operations

Let us conclude today by taking a look at some issues that are nonetheless important operationally:

- When and who intervenes in a situation when a vessel is drifting and the Master or owner does not wish to enter an LOF?
- What is the role of the Harbour Master in a salvage event and when does the Salvage Master take over? Who makes the decision?
- What liability does the port assume if the Harbour Master believes salvage is not necessary? Indeed is this a decision for the Harbour Master?
- What should the relationship between the Salvage Master, the Harbour Master, AMSA's Salvage Coordinator or SOSREP equivalent and the Shipowner's Casualty Representative?

- Any other operational or relationship issues that anyone wants to raise?

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REPORT

CONFERENCE & WORKSHOP

SAFE HAVENS & SALVAGE

Australian Maritime Safety Authority

**Association of Australian Ports and Marine
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