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In the Arctic: Demands on structures and crew

Wreck removal: Ever-spiralling costs

Asia: Taking the green message to heart

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The ever-spiralling costs of wreck removal

The most significant cause of escalating wreck removal costs is government interference. Simon Tatham takes a look at challenging unreasonable demands of authorities in the courts and what that means for the industry.

At the annual Salvage and Wreck Removal conference held in London in December, my colleague John Reeder QC and I addressed the vexed question of how authorities making unreasonable demands in wreck removal cases might be lawfully challenged.

John took the UK, while I 'pulled the short straw' and covered the rest of the world. With the help of some well-known shipping lawyers in a number of jurisdictions, we investigated what the legal options and remedies of a ship owner and its Club might be.

The backdrop to this was the International Group of P&I Clubs' Large Casualty Working Group's conclusion that the most significant cause of escalating wreck removal costs was government interference.

What is apparent from experience, and from our discussions with P&I Clubs and others involved at the coal face of wreck removal operations, is that the best policy is to co-operate with local authorities, winning them around to accept that the salvors, the Clubs and their army of technical consultants know what they are doing. They have the experience to work out what is feasible, practical and cost-effective. Those costs can then be anticipated so far as circumstances allow, and controlled with suitably worded negotiated contracts. Invariably, however, it is a requirement that objectives, time-frame and methodology have to meet the expectations of, and be approved by, local state officials.

Our survey showed that only in very few jurisdictions are authorities obliged to take into account any form of cost/benefit analysis. Under the pressure of local politics and media glare, coastguards, harbour masters, central and local government officials are also inclined to overreact.

One result is that demands can be made for a wreck removal proposal to be submitted in an unrealistically short time – for example, two weeks for ***Rena*** and five weeks for ***Costa Concordia***. It is unsurprising that not every eventuality is foreseen and there is limited opportunity to sit down with the interested parties to discuss practical and economic outcomes, while still seeking to minimise hazards to navigation or the environment. In certain cases, the methodology demanded may be excessively laborious relative to the impact on the environment; in others, 'local content' requirements are open to abuse.

The problem for the Clubs who are picking up these large bills is that once the wreck removal operation is underway, the overheads of the operation are such that delays cost money. Weather delays are of course factored into the project risk and costings, but the risk of an authority unilaterally calling an operation to a halt on account of a dispute is to be avoided, while an application to court for the judicial review of an irrational decision is close to commercial suicide.

► *Simon Tatham.*

There are, on the other hand, cases past and on-going where the immediate threat to the environment from bunkers or cargo has been dealt with, or the hazard to navigation removed, even if that means cutting down the superstructure to below chart datum. In such cases, the cost of removing the remainder of the wreck is frequently difficult to justify and this typically tends to be where the legal battle lines are drawn.

The Nairobi Wreck Removal Convention 2007 is meanwhile gaining acceptance and is likely to be on many statute books before long. It will be a mixed blessing so far as marine insurers are concerned, but one of its provisions, Article 2, provides that measures taken by the affected state shall be proportionate to the hazard and shall not go beyond what is reasonably necessary. This may not amount to a cost/benefit analysis, but when the Convention applies in future in a state where a new wreck has just come to ground, one can be fairly certain that these principles will be argued strongly across the table prior to the inking of any removal contract.

A copy of our paper is available on application: simon.tatham@tugadvise.com

● *Simon Tatham is a partner of Tatham Macinnes LLP and a founding member of its new service, TugAdvise.com. He has 30 years' experience in shipping law.*

Belgian fishing vessel refloated

▲ *The Belgian fishing vessel* **Z 75 Zeldenrust was** *grounded on 17th October last year, near Petten, the Netherlands. It was later refloated by Mammoet Salvage on 22nd October, after the Iskes Towage & Salvage tug* **Brent** *was mobilised.*

Photo: Bram Mensinga, salvage master with Mammoet Salvage BV.

Salvage goes mobile

Marine Response Alliance (MRA) has launched a mobile app, providing ship owners/operators, qualified individuals and the US Coast Guard with immediate access to the MRA's resources for salvage marine fire-fighting (SMFF), as per OPA 90 compliance, as well as the ability to report incidents through Titan Salvage.

The OPA 90 SMFF app enables users to report an incident, have direct dial access to worldwide offices, and obtain access to a secure password-protected database of registered vessel documents, pre-fire plans and certificates online. The user can review MRA's geographic specific appendices, request drills, and receive regulatory updates.

The app can be downloaded free from Apple and Android app stores.