

# Viva España on Place of Refuge

**Simon Tatham looks at how the first real test of *EU Operational Guidelines on Places of Refuge* allowed authorities to go some way towards redeeming their reputation**



► Simon Tatham

Hats off to the Spanish authorities for granting the stricken *Modern Express* a place of refuge at Bilbao and full marks to Smit Salvage for successfully getting a line on board only 25 miles from shore. Their first attempt had failed when the towing connection parted and the heavily listing vessel had drifted 175 miles towards the French coast.

Who knows what would have happened if the weather had not improved – no doubt one of the issues that will be explored in the LOF arbitration. Arguably the risk for either coastal authority was not difficult to assess in that, despite listing to 50 degrees, the vessel remained stubbornly afloat after six days and was not breaking up, there was no toxic cargo nor fire on board and it was neither a tanker nor polluting.

Nonetheless, the decision goes some way to redeeming the reputation of the Spanish authorities after the debacle of *Prestige* which was ordered out to sea when only 25 miles off Galicia in 2002 and went on to break up, sink and pollute 600 miles of coastline, giving rise to claims reportedly of US\$5bn and long term detention of its master.

In that case, ABS maintains that the tanker had the structural integrity to lie safely in a Place of Refuge while its eventual break-up was inevitable in heavy seas.

The *Modern Express* incident marks a turning point in the place of refuge debate, at least in Europe. This was the first serious application of the new *EU Operational Guidelines on Places of Refuge* formally adopted this February. These guidelines are a companion piece to the IMO Resolutions A.949(23) and A.950(23) of 2003 which first addressed this issue internationally and are fully adopted. The latter are comprehensive in the establishment of a framework for governments, owners and salvors to deal with ships in distress and in need of refuge. However,

they lacked practical application and cases have demonstrated that governments have some way to go before the necessary degree of co-operation is established to allow incidents to be promptly and effectively resolved. Examples of the on-going problem include the burning container ship *MSC Flaminia* in the western approaches to European waters in 2012 and the tanker *Maritime Maisie* on fire following a collision in Korean waters in 2013 which had drifted into Japanese waters before eventually, following a stand off between the two governments, being afforded refuge in Ulsan 100 days later.

Picking up the IMO framework, the

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EU Guidelines offer a template to enable adjacent coastal administrations to work together, taking on responsibility for the management of the situation as it develops, often very quickly. The objective was to be pragmatic: to ensure a single co-ordinating competent authority as the main point of contact for all stakeholders while allowing that responsibility to transfer in an orderly fashion to a neighbour administration, the gathering of information and issuing of situation reports and organisation of suitable evaluation teams to make a thorough analysis of the risks and communicating that work so that informed decisions can be taken.

Finally comes the decision making, holding true not only to the IMO led principle of “no rejection without inspection” or on grounds of a lack of insurance certification, but also requiring an explanation as to why any

request has been declined.

The European Maritime Safety Agency is, meanwhile, committed to an on-going programme to engender co-operation. It may be difficult to replicate that in other regions not bound in the manner of the EU. The US was ahead of the game with the pre-OPA 90 National Response System developed after the *Torrey Canyon* tragedy, whereby a federal on-scene co-ordinator is appointed; however, I look forward to discussing in Boston at *ITS 2016* with US colleagues how this works when a drifter lies between the US and Canada, Mexico or, for that matter, Russia.

In the past, salvors with the support of owners, their insurers and Class, where engaged, were burdened with the task of making out a case for port of refuge entry.

However, with no guidelines available, the response of each destination state or port differed. It made for exciting work, but there was nothing with which to beat a declining state; they simply called the shots and too often port entry was a precursor to some onerous port charges with delays adding to the salvage bill.

Nowadays those parties still have an important role to play, but states are required to be pro-active. It might be said that the IMO Guidelines, while non-mandatory and not giving rise to a legal duty to provide a Place of Refuge, set an expectation and now, in legal terms, the standard of care.

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