

# LOF decline is a cause for concern

Regular columnist Simon Tatham looks at the debate surrounding salvage contracts



► Simon Tatham

**I have attended the Salvage & Wreck conference in London for more years than I care to admit. The December event was particularly well attended and interesting. One of the central debates took place around LOF and the various discussion papers that have been put forward over the future of salvage contracts now that salvage revenues from LOF have fallen to an all-time low, according to the ISU's 2017 statistics. This for many is a cause of real concern.**

LOF (2011 version) is currently being updated, as periodically happens, to keep it abreast with issues that develop in practice, hard on the heels of the latest 2018 version of its subsidiary SCOPIC fixed tariff clause.

There is a broad consensus across the industry that LOF (with SCOPIC) works extremely well in the right cases but equally an acknowledgement that there are simply not enough right cases, while the contract has attracted a certain and unwelcome notoriety in relation to rescue towage or simple towage cases. This is particularly the case where tows have been conducted under LOF in circumstances where an ocean-going tug has been engaged (by the contractor) on commercial rates, for example under TOWHIRE. If the resulting salvage award greatly exceeds the commercial cost of the tug and limited added value has otherwise been conferred on the salvaged property, the insurers will contend that they would simply rather pay for having that tug on a commercial rate. Indeed, in most cases nowadays they are able to contract direct with such commercial tug owners.

In turn, traditional salvors are not

incentivised to invest in salvage equipment and expertise, with the result that leading household-name salvors no longer maintain salvage tugs on standby and no new salvage tugs are being built.

Jurisprudentially, this poses a problem. Applying the widely adopted 1989 International Salvage Convention Art. 13(i), tribunals are required to make 'encouraging' awards in order to recognise investment in and commitment to salvage. This was the internationally adopted formula intended at governmental level to ensure the future of a viable salvage industry able and ready to intervene to save life and property and prevent damage to the environment. If reported ISU pure salvage revenues are as low as US\$60m (the cost of a good salvage tug), there must follow an existential threat to the salvage industry.

One difficulty is that when salvors, professional or otherwise, are engaged on amended commercial terms such as TOWHIRE or WRECKHIRE, those contracts are not fit for purpose in genuine salvage situations and particularly unsuitable where things go wrong. Conversely LOF automatically adapts, while at the same time applying checks and balances to help ensure a fair outcome.

Various discussion papers have been put forward over recent years to bridge the perceived gap between pure salvage terms on the one hand and commercial terms on the other.

These include a proposed Rescue Tow Clause to be added to LOF. This would apply a fixed uplift to a commercial tow rate with a fall-back provision allowing the services

to revert to a clean LOF in the event of a material change not contemplated at the time of engagement.

A second proposal is a fund that would be levied on shipping and administered along the IOPC funds model designed to meet the need for (financial) encouragement by topping up salvage awards over and above an initial contribution from property underwriters: this would relieve the pressure on hard pressed insurers and spread widely the cost of salvage.

More recently a third idea, nicknamed 'LOF Light', proposes an optional clause incorporated into LOF that envisages SCOPIC rates applying to the services with a flexible percentage bonus element, by way of a success fee, payable on top, this to be agreed on a case by case basis (or optionally left to the arbitrator to determine).

Last but not least, there is an ingenious proposed amendment to the Salvage Convention which restricts the ability of those concerned with property 'in danger' to opt out of salvage or, to put this another way, makes salvage obligatory in such cases thereby ensuring a continuing income for salvors.

With regard to the proposed clauses amending LOF, most informed commentators, though not all, are tending to the view that these will either be used in every case, consigning any genuine salvage cases to history, or in inappropriate circumstances. Thus, for example, surely the engagement of salvors to an endangered container ship where great benefit is conferred upon property, a reward should not then be based on day rates whatever the mark-up. Certainly the ISU has come out firmly against such a proposal.

Debate is a good thing and it will continue. In the meantime, what is certain is that the ISU statistics will be showing a positive upwards spike reflecting the likely award in the *Maersk Honam* case, where Smit and Ardent worked together as LOF co-contractors, rumoured as likely to be the highest in history. Moreover one great concern of recent times, whether LOF was capable of adapting to the very largest container ship disaster incidents, has been dispelled at least in this instance: reportedly the operation, including the collection of security and on-shipment of containers, has proceeded remarkably well thanks in part to commendable co-operation between the numerous stakeholders.

## Canal tow for immobilised ship

**Tsavliris Salvage tugs towed the 5,581grt general cargo vessel *Ibrahim Konan*, laden with 2,520 tonnes of refuse-derived fuel, through the Corinth Canal to Gulluk, Turkey, after it was immobilised due to main and auxiliary engine failure around 45 miles off Kefalonia, Greece.**

The company's latest quarterly activity report tells how the 3,300bhp *Proteas*, with a bollard pull of 45 tonnes, and the 1,320bhp, 20-tonne bollard pull *Hermes* were the Tsavliris tugs involved in the operation.

The salvage company was also engaged after the 54,592grt container ship *CSL Virginia* was struck by the Tunisian ferry

*Ulysse* while anchored in ballast condition off Corsica. A salvage team including divers was mobilised from Greece to attend.

Tugs *Toscana* and *Pacini*, and the anti-pollution oil recovery vessel *Aegis I* were mobilised from Livorno and Piraeus respectively, and a significant quantity of fuel oil was pumped into *Aegis I*'s tanks.

Meanwhile, Tsavliris' 5,500bhp tug *Cooper Estibador*, which has a bollard pull of 60 tonnes, was mobilised from San Lorenzo, Argentina, to provide standby and escort services after the 51,250grt bulk carrier *Paola Bottiglieri* was immobilised by the loss of its starboard anchor at San Lorenzo Roads, Argentina.