

Caution needed when taking on Uncle Sam

Regular columnist Simon Tatham looks back at a case where a scientist's expert advice was that fish might actually enjoy dining on a 'natural product' such as heavy fuel oil



► Simon Tatham

Cases can have many twists and turns, some spectacular. The first unfortunate turn in the case of *Hyundai New World* was made after it had loaded a cargo of iron ore at Itaqui in the Baía de São Marcos in Brazil. The vessel unberthed and, heading initially upstream, commenced a long turn in the bay to starboard, intending to come around to the north and seaward. It ran aground on a shoal and there it remained. This was in 1987.

I was despatched as a young solicitor to South America and, eventually, climbed on board. I was met by the master and stayed a few days on the vessel taking evidence. The ship, of 200,000dwt, had been on its maiden voyage. It was pristine but strange noises emanated from its hull, which was now listing slightly, as the deep river silt and mud began to draw the vessel down. Eventually it was to disappear.

We examined the ship's working chart, a US Defense Mapping Agency (DMA) chart. *Hyundai New World's* marked grounding position, if correctly plotted, showed it some half mile clear of a charted shoal mid-river. Understandably, the master was scratching his head, wondering what had gone wrong. I took the chart and my statements back to London, via Bogota and New York.

Meanwhile there was some consternation in Brazil concerning the threat of pollution from the heavy fuel oil remaining on board. A press conference was called at which a senior government scientist, an impressive woman appropriately dressed in a white lab coat, announced that in this river many trillions of tonnes of water moved up and down each day with the tide and that 400

tonnes of oil would be, quite literally, a mere drop in the ocean. She added that oil was a natural product which came out of the ground and that the Brazilian river fish population, well known for its propensity to devour many things, might actually quite appreciate the change in diet. How times have changed.

The P&I club engaged Wijsmuller (as it then was) on daily wreck removal terms to attempt a refloat, attempt being the operative word as this ship was going nowhere. However, the failure convinced the Brazilian authorities that throwing further resources to effect a removal would be futile. I do believe the bunkers were removed, so perhaps the local fish were spared.

Back in London we laid out the chart on our office chart table and it was compared with the equivalent Brazilian and British Admiralty charts. Both showed the extremity of the offending shoal about a further half mile to seaward. Water depths where the ship had foundered were now marked as being in the order of 15m as opposed to around 30m. Digging deeper with the assistance of a retired marine cartographer, it transpired that the Brazilian hydrographic office had quite recently surveyed the river and had disseminated notices to the other chart agencies (including DMA) and had duly updated its own chart. The BA chart had likewise been corrected by a suitable Notice to Mariners and they had also sent notice of that to the DMA.

Leading attorneys in New York were engaged and suit eventually brought on behalf of our South Korean client underwriters against the US Government for a claim of some US\$60m for negligence in failing to

update its charts, which were sold to and relied upon by mariners.

In hindsight, however, one should take on the might of the US Government with some caution.

The case was going rather well when, in 1994, Congress passed a provision, buried deep in legislation, which was short and to the point: retroactively providing the DMA and the US Government with sovereign immunity from such claims.

Less than a month later the government filed a motion to dismiss the action for lack of subject matter jurisdiction. The attorneys were now forced to change course and argued that Congress' modification of the law, evidently in direct contemplation of this action as the government admitted, was unconstitutional. A hearing took place the following spring. The judge of the Southern Circuit of New York dismissed the case.

So that was it. One cannot win them all, as they say. Perhaps one day the shoals will recede, and *Hyundai New World* will resurface and surprise us all once more

The case can be read at <https://law.justia.com/cases/federal/district-courts/FSupp/888/543/1644080/>

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A salvage dive team located a two-inch diameter hole on the port side of the passenger ferry *Sili's* engine room and successfully applied a temporary patch after it started taking on water in Pago Pago, American Samoa. The US Coast Guard reported that any pollution from the incident had been recovered or dissipated, but containment booms would remain in place, and a watch-stander would stay on the vessel to monitor the situation. As *IT&O* went to press a long-term salvage plan for the ship was being developed.

Ocean Infinity, the seabed survey and ocean exploration company, has successfully located the wreck of the lost South Korean tanker, *Stellar Daisy*, at a

News In brief

depth of 3,461m in the South Atlantic, approximately 1,800 nautical miles west of Cape Town. *Stellar Daisy* sank on 31 March 2017, while transporting iron ore from Brazil to China. All but two of the 24 crew were lost.

A US Coast Guard crew assisted the tug *Antietam* which was taking on water near Port Arthur, Texas. The tug, which was pushing two barges, intentionally grounded near Taylor Bayou to avoid sinking.

Salvors are waiting for a five to six-day weather window, with winds below

10m/sec, before attempting to raise the sunken Norwegian frigate *Helge Ingstad*, which they hope can take place towards the end of April.

Authorities in the Solomon Islands have reported a breach in the hull of the grounded bulk carrier *MV Solomon Trader* – which ran aground in February during a storm – leading to fears of an environmental disaster near the East Rennell UNESCO World Heritage site.

The ISU's annual Associate Members' Day will take place at The Merchant Taylors' Hall in the City of London, on 20 March.