Places of Refuge
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Photo: French Navy
Introduction

The IMO defines a ‘place of refuge’ (POR) as a place where a ship in need of assistance can take action to stabilise its condition, reduce any hazard to navigation and protect human life, ships, cargo or the environment. A ship in need of assistance means a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the ship or an environmental and/or navigational hazard.

A POR might be sought in the following circumstances:

- If the ship is damaged to such an extent that it is unsafe to continue the voyage and she should deviate to the nearest POR
- If the damage is serious and justifiable enough to allow for deviation
- If there is serious risk that the ship will progressively deteriorate
- If such a ship in such a situation can reach the POR and is not a vessel in distress.

The term ‘port of refuge’ has been used in the past, but it was decided at MSC.74 in May 2001 that the word ‘port’ is geographically narrow and restrictive. The wider term ‘place’ can refer to any sheltered area in which a ship in a damaged condition may seek assistance, such as a port, harbour, anchorage, bay, lake, river or fjord. It may also refer to an offshore area or beach where a vessel may ground itself if there is no alternative course of action.

The selection of the POR is the responsibility of the coastal State that the ship is attempting to reach. The location should allow for operations to be carried out effectively and with minimal risk to life and the environment. Operations needed may include:

- Inspection to ascertain the scope of work required to make the ship safe and seaworthy
- Repairing damage and remedying defects
- Provision of spares, stores and equipment
- Ensuring the safe transfer of persons to and from the ship
- Preventing further deterioration of the ship
- Transferring cargo, bunkers and ballast to improve stability and/or minimise the risk of pollution.

When selecting a POR, the coastal state must determine:

- The risk posed to the shore and coast by allowing the vessel to take refuge, including the ability of the coastal State to respond to and contain any pollution that may arise
- The possibility of subsequent legal action by those affected by any resultant pollution
- The financial responsibility for the operations that may follow
- The potential consequences to life and the environment if the refuge is refused, and in particular whether it will be harder to manage a response to environmental pollution further offshore.
Case Studies

- In 1999, the oil tanker ‘Erika’ was on passage from Dunkirk to Livorno. After encountering rough weather in the Bay of Biscay, the ship developed a list. Cracks and buckling were noticed on the main deck and the ship subsequently broke in two and sank. All personnel were rescued, but thousands of tons of oil were released into the sea. Although the ship did not reach its chosen POR at Donges, the Master was unaware that the French authorities had actually refused permission for the vessel to enter the POR.

- In 2000, the oil tanker ‘Castor’ was on a laden voyage from Romania to Nigeria when she suffered a 26-metre crack across the main deck in heavy weather. Several Mediterranean States refused to grant a POR and the ship remained under tow for 40 days until the cargo was transferred and repairs were carried out off Tunisia.

- In 2002, the tanker ‘Prestige’ began leaking oil off the coast of Spain and a crack was discovered. Repeated requests were made over successive days by the ship for a POR, but on each occasion the Spanish authorities denied the request. Six days after the discovery, the ship broke in two and sank in international waters. Approximately 70,000 tonnes of oil escaped; efforts to control the pollution were hampered by the location in deep open waters. It is generally believed that the ship and its cargo could have been saved if a POR had been granted.

- In 2002, the tanker ‘Magnitude’ was waiting off Milford Haven to discharge its cargo of oil when a visible crack and an oil slick were discovered. Some of the cargo was transferred and a request was made to enter Milford Haven as a POR. It was decided that, despite the risk of pollution if the situation worsened, bringing the vessel into the port posed the smallest risk of pollution to the greater environment. A major oil spill offshore would have been far more damaging to the Welsh coast and more difficult to manage. The vessel entered the port, was boomed, discharged its cargo and was repaired successfully.

- In December 2004, the large bulk carrier ‘Selendan Ayu’ was on passage from Seattle to Xiamen, China. After transiting the Unimak Pass in the Aleutian Islands in heavy weather, the vessel suffered an engine failure, causing her to go adrift. Efforts at repairs failed and assistance was requested from Dutch Harbor and the United States Coast Guard (USCG). Despite extensive efforts to tow the vessel safely to the POR, it was impossible in the wind and sea conditions. The ship ran aground and broke in two. A large oil spill ensued and 6 people died in a helicopter accident during the rescue operation.

- In 2012, the chemical tanker ‘Stolt Valor’ suffered an explosion and subsequent fire while off the coast of Saudi Arabia. Repeated requests were made for the ship to be granted access to a POR, but these were denied. The vessel did not sink, but it took many difficult months in open sea to remove the cargo and bunkers. The granting of a POR would have meant greater safety for personnel throughout the transfer operations and less risk to the marine environment.

- In 2012, the container ship ‘MSC Flaminia’ suffered an explosion and fire while on passage from the US to the Netherlands. The fire was extinguished and permission was sought from several European States to enter their territorial waters to reach a POR in Germany to continue repair work. Each coastal State undertook inspection and the vessel finally arrived at the POR two months after the incident. This delay entailed much risk.

- In December 2013, the chemical tanker ‘Maritime Maisie’ caught fire following a collision with another vessel near the port of Busan. Various Asian States refused to grant a POR due to the hazardous nature of the cargo and the severe damage to the hull. This was despite the high risk of the vessel breaking up due to prolonged exposure to heavy seas and the wider environmental disaster that would result. The ship remained under tow by tugs for 100 days and only in April 2014 was the vessel granted a POR in South Korea.

- In March 2015, the general cargo ship ‘Eastern Amber’ hit a wreck while on passage from Inchon to Busan. The vessel was refused a POR in the region until the oil had been removed from the vessel. The vessel subsequently capsized and eventually sank in the East China Sea despite efforts to remove the oil. The International Salvage Union stated in January 2016 that the incident demonstrated the need for continued improvement in encouraging authorities to allow ships to be brought to a POR where their condition can be stabilised.

- In November 2016, the general cargo ship ‘Saga Sky’ sustained damage following a collision with a barge, three miles southwest of Dover in rough weather conditions. The ship drifted onto the Varne Bank and started to take on water. The damage was assessed and plans expeditiously approved to move the damaged vessel to a POR before the condition worsened. The vessel proceeded safely to Dunkirk, where repairs were carried out.
International Guidance

Historically, a ship in need of assistance relied on the good faith of the nearest port authorities. Over time, international regulations were implemented to formalise the response to ships in need of a POR. The Intervention Convention (1969) and the United Nations Convention on the Law of the Sea (UNCLOS) (1973) gave coastal States the right to regulate entry into their waters. They set out the legal conditions on whether a vessel in need of assistance may enter a State’s territorial waters to find a POR. A divergence followed in which different member States had different policies on how POR were considered. Eventually, following a series of high profile incidents, specifically the ‘Erika’, the ‘Prestige’ and the ‘Castor’, the IMO formulated newer and stricter guidelines for ships in need of assistance.

Adopted in 2003, IMO Resolution A.949(23) contains the IMO Guidelines on places of refuge for ships in need of assistance. The Guidelines apply where the safety of life is not directly threatened (incidents involving threat to life are covered under the International Convention on Maritime Search and Rescue (SAR)). The aim of the Guidelines is to allow the vessel to reach a POR before a SAR situation occurs. They acknowledge that, when a ship has been damaged, the most effective way of preventing additional damage and pollution from the ship’s deterioration is to transfer cargo and bunkers as appropriate, while allowing for repairs to be carried out.

In 2003, the IMO also adopted IMO Resolution A.950(23), which sets out the structure and guidelines for member States in creating maritime assistance services.

Guidelines by Country

A comprehensive analysis of national responses on POR up until 2012 may be found in ‘Places of Refuge for Ships in Distress: Problems and Methods of Resolution’ by A Morrison.

As of 2016, the approach to POR in the UK, Europe and the USA is as follows:

1. United Kingdom

The UK maritime response system for responding to a ship requiring a POR is well developed and structured, and so far it has demonstrated to be effective [as in the case of the ‘Saga Sky’]. Under the Marine Safety Act 2003, the UK Maritime and Coastguard Agency (MCA) designate a single individual, the Secretary of State’s Representative for Maritime Salvage and Intervention (SOSREP), with sufficient power to make crucial decisions in a very short time. This includes the designation of a POR, an immediate response from the authorities and the ability to coordinate efforts to bring a damaged vessel to a POR safely, where any further pollution can be minimised and controlled.
2. Europe

The EU implemented the IMO Guidelines by passing, in parallel, EU Directive 2002/59. This included, among other things, the requirement for member States to set up national plans to address the issue of POR for vessels in need of assistance. This legislation was amended by Directive 2009/17 to allow for more detailed plans of POR and a prominent role for a competent authority with regard to assessment and decision making. The EU has also created the EU Operational Guidelines on Places of Refuge, which provide practical guidance on managing a request for a POR and should hopefully prevent a reoccurrence of the circumstances that arose in the ‘MSC Flaminia’ incident.

3. United States of America

The US has designated a National Response Team (NRT) to coordinate all the relevant US government agencies in the event of a maritime incident and to implement the IMO Guidelines. The NRT Guidelines for Places of Refuge Decision-Making set out a framework for identifying a potential POR and detail a specific decision-making process in which a United States Coast Guard (USCG) Captain of the Port (COTP) can decide whether a vessel needs to be moved to a POR and, if so, which POR will be used.

Summary

It has now been 13 years since the IMO POR Guidelines were adopted, but the implementation and effectiveness of these Guidelines has not yet been fully seen. Since 2003, several incidents have occurred internationally in which a POR has not been designated expeditiously or, in some cases, at all. Swift action is essential to allow a ship to reach a place where repairs can be carried out and for pollution prevention operations to be at their most effective.

Efforts in the EU have seen a continual focus on improving the legislation and guidance of coastal States on POR procedures. However, recent efforts, internationally and at the IMO, to assess and improve responses on designating POR have diminished from the legislative agenda. The EU submitted its Operational Guidelines on Places of Refuge as an information paper in May 2016 at MSC.96 (MSC.96/24/5) and this was merely noted by the committee after a discussion; no action by the IMO was forthcoming as a future agenda item.

However, the potential for future maritime incidents shows that continued efforts to improve the regulation and guidance on this issue are still required and interest is therefore still relevant. The need for a future mandatory code or amendment to a convention may reappear. The consequences of a future large-scale oil spill that may, for example, have been averted by a successful diversion to a POR will no doubt concern shipping companies, P&I Clubs and seafarers in years to come.
Checklist for Action on Board the Ship

The following must be considered when deciding upon a port of refuge:

- Can the port be reached safely? (sufficient fuel, extent of damage)
- Are the port authorities friendly/hostile?
- Can the vessel enter port and remain there safely?
- Are suitable repair facilities available at the port?
- Can cargo be discharged ashore if necessary?
- Are there suitable crew repatriation facilities?
- Can ship’s spares/stores be imported easily?
- Is the port free of war or civil unrest?
- Are the required charts on board?

When deciding upon a POR, the owners and the ship’s insurers should be consulted.

After deciding on a POR, the vessel should:

- Inform the port authorities (the coastal State may designate an alternative POR)
- Consider state requirements at the POR
- Inform the owner, charterer and agent at the original destination and give them the reason for entering the POR
- Consult the underwriter
- Inform the agent at the POR
- Contact the P&I Club at the POR.

While deviating to a POR, the vessel should inform the owner of:

- The date, time, position and nature of the incident
- ROB of D/O, FO and FW on board
- Current situation on board
- Weather: current and predicted
- Master’s intention to deviate
- Name of POR
- ETA at POR
- Assistance required.

The vessel should inform the agents at the POR of:

- The name and port of registry
- Official number, IMO number
- Ship’s particulars (GT, NT, LOA, LBP, draught)
- Reasons for entering
- Expected time of arrival
- Amount of cargo and distribution
- Details of assistance required.

On arrival:

- Obtain a pilot
- Obtain pratique
- Manoeuvre the ship in the customary manner.

After entry:

- Issue a note of protest, reserving the right to extend
- Inform the owner and the charterer of the ship’s safe arrival
- Inform the underwriter in accordance with the tender clause
- Inform the P&I agent and the underwriter’s surveyor
- If the cargo is to be discharged, request the GA adjuster and the qualified independent cargo surveyor to be present before breaking bulk (opening/closing of hatches)
- Arrange a damage survey by Class. If no Class surveyors are available, arrange for another Classification Society surveyor to survey the damage
- After receiving the surveyor’s report/recommendation, call for tenders with advice from the underwriter’s representative. In the tender, include the statement “lowest or any tender not necessarily accepted”
- Arrange repairs under the supervision of the surveyor/underwriter’s surveyor
- After repair, arrange for a survey. Once satisfied, the surveyor will issue an interim certificate. If he is not employed by a Class Society, he will issue a certificate of seaworthiness
- A proper record is to be kept, commencing from the time of deviation to the port of refuge. Copies should be sent to the owner for P&I claims
- Issue more protests, giving full details of damage and repairs. Copies should be dispatched to the owner
- The ship can be cleared to resume voyage.

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