

Salvage seeks place of refuge

Salvage companies are feeling the pinch as the reduction in the number of accidents cuts into their business. But the troublesome issues such as the Castor, Erika, Prestige and Willy highlight a need for an efficient, vibrant industry

As the number of accidents in the maritime industry falls the salvage industry, whose very existence depends upon getting the call to help during an incident, is finding economic life tough and the stresses imposed by falling business opportunities is becoming apparent.

With the debacle surrounding the decision making processes that eventually caused the Prestige tanker to sink off the coast of Spain last November fresh in our minds, the salvage industry and the maritime industry have some serious thinking to do and action to take.

Bill O'Neil, secretary general of the International Maritime Organisation, said: "The successful intervention in maritime accidents to save lives and minimise environmental damage, has never been greater."

Speaking at the recent, biannual International Salvage Union meeting at the IMO headquarters in London, Mr O'Neil said that the sophistication and expense of the equipment and personnel required to perform modern salvage techniques continues to rise.

If the maritime and shore based communities place a value on having highly complex and capable salvage units on call, ready to act quickly to help safeguard the environment from the threat of oil spills and other pollution, then suitable mechanisms must be found to pay for them.

Arnold Witte, president of US-based salvage firm Donjon Marine, suggests that while technology and environmental demands have increased the operational areas and what is now salvageable through deepwater recovery, new oil extraction and pumping techniques, "there is still the need for the salvor to tool up and train for these new capabilities at his expense not being able to assess a return on investment based on unknown future casualty response.

"To a limited degree, the promotion of fair and reasonable retainer to the salvor through the implementation of the new salvage regulations may be a partial answer," said Mr Witte.

Wreck removal

The IMO's proposed wreck removal convention is intended to provide international rules on the rights and obligations of states and ship owners in dealing with wrecks, drifting or sunken cargo which may pose a hazard to navigation or to the marine environment. The draft convention currently being considered by IMO would clarify matters such as identification, reporting and removal of hazardous wrecks, in particular those found beyond territorial waters, and the possible need for financial security to cover liability for cost of their removal.

Although this has been one of the legal committee's main priorities for some time now, said Mr O'Neil, there are still some major points to be resolved. "However, there is a keen interest on the part of the maritime community to have rules on wreck removal adopted through IMO and the committee is working diligently to reach a consensus as to the final shape of the prospective convention so that it can be brought to a diplomatic conference as soon as possible".

US regulations

In the US, proposed salvage regulations published in May 2002 are now under intense scrutiny. Public comment ended last October and the US Coast Guard are now reviewing those comments to decide if any changes need to be made. The timetable has slipped slightly and the final rule is likely to be made this year, with implementation possibly pushed back from December into 2004.

The drafted rules will apply solely to tankers, and are unlikely to be extended to other types of vessels. The regulations are being issued under the authority of OPA 90's vessel response plan requirements. Although interested parties such as the American Salvage Association and various environmental groups believe the regulations should be extended to cover other vessels including dry cargo vessels. "Coverage of other vessels will require either a change to OPA 90 or identifying another statutory basis for the rules," says Richard Buckingham, US assistant supervisor of salvage (Admiralty).

The success of the SOSREP system in the UK, driven forward by Robin Middleton, the Secretary of State's Representative (SOSREP), is being watched carefully around the world and has been widely praised by US officials.

For example, in the UK there is just one (SOSREP) official with wide reaching command and control powers, whereas in the US there are 47 similar positions dotted around the coastline known as Captain of the Port (COPT). Commenting on the SOSREP regime, Mr Buckingham said SOSREP (and staff) build up an expertise and experience base dealing not only with salvage issues, terminology and techniques but also with the key salvors themselves and their key employees...this translates into continuity of experience and decision making."

The new rules lay out detailed salvor selection criteria that must be considered when selecting a resource provider or salvor. Mr Buckingham said that the US authorities are keen to use established companies with a successful salvage history. To be selected as a resource provider, a salvor has to meet a number of stringent criteria including being actively involved in the salvage business with a documented history of successful salvage operations. Other key demands include having equipment and personnel on call 24 hours per day and having a continuous training for its personnel, said Mr Buckingham.

A key factor is the amount of money needed to fund a rolling 24 hour service. As Mr Buckingham, said: "There must be standing funding agreements between the designated salvors and the 'planholder' (vessel owner/ operator) that contain agreed pricing lists for possible services/ equipment. This is to prevent delays due to negotiations during an actual incident.

"The Coast Guard will accept advance agreements to use Lloyd's Open Form (LOF) in a lieu of a detailed pricing list," said Mr Buckingham.

Arnold Witte, president of US-based salvage company Donjon Marine, said many in the industry believe the new regulations are too complex, restrictive and expensive. "It is interesting to note that the same objections were made to the initial passage of the OPA 90 act. Looking back over the last 12 years, there are few who would argue that in terms of reducing marine pollution in the US, OPA 90 has been very successful," he said.

Mr Witte argued that there has been one legal impact in the US "which is counterproductive, bullying and just plain wrong. That is the move toward the imposition of criminal liability in instances where there exists negligence which should impose a civil liability only.

"Driven only by politics and currying favour with an uninformed public, there is the real threat and reality that criminal sanctions are to be imposed.

"This cannot be insured against and poses a significant threat to the salvage community. The only answer is responder immunity - one who responds to a casualty to solve a problem and has no hand in creating it, should not be subject to the spectre of criminal liability, no matter how remote," he said.