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US policy regarding places of refuge

Dennis L. Bryant

The United States Government recently issued two documents that together articulate and implement this nation's policy with regard to the handling of requests by ships in distress for entry into a place of refuge. The policy is intentionally designed so as to not lead automatically to any pre-ordained result. Rather, it establishes a framework within which requests for entry will be evaluated and decisions made. The goal is to have a repeatable, transparent process that will identify and implement the lowest-risk option for each incident.

A "place of refuge" is defined for this purpose as a location where a ship needing assistance can be temporarily moved and where actions can then be taken to stabilize the vessel: to protect human life, sensitive natural and cultural resources, historic properties, national defense, security, critical infrastructure, and economic interests; and to reduce or eliminate a hazard to navigation and resolve a marine casualty. The policy for responding to requests for entry into a place of refuge is structured with a hierarchy that favors human health and safety over natural resources and favors natural resources over economic issues. Two overriding issues that may lead to elimination of particular potential places of refuge are national defense and homeland security.

The operational commander (usually the US Coast Guard Captain of the Port – COTP) is charged with addressing the request for entry into a place of refuge through use of risk-informed decision-making. This is accomplished through a multi-step planning process. First, the operational commander gathers as much information regarding the ship and its situation as is reasonably possible. The next step is to identify the worst-case scenario, which may involve such things as an oil or hazardous substance spill, threat to a major fishery area, or risk of fire and explosion. The third major step in this planning process is to identify specific potential places of refuge and alternative course of action options. An evaluation is then conducted for each option. The lowest risk available option is then selected.

In accordance with international law, the United States is not obligated to grant requests for entry into a place of refuge. The operational commander may, after evaluating the various options, determine that the risk presented by entry of the ship is too great and that one or more of the other options presents a lower risk. One option is to require the ship to continue its voyage (this should be accompanied by a plan to render assistance and impose restrictions on the ship's

E-mail

dennis.l.bryant@gmail.com

Internet

<http://brymar-consulting.com/>

Maritime Reporter & Engineering News

<http://marinelink.com/en-US/magazines/Archive.aspx?MID=3>

operations until the situation is ultimately resolved). Other options include requiring that the ship undertake repairs at its current location; that it be taken out to sea and scuttled at a specific location; or that it be grounded at a specific location. The risks involved with each of these options must be included in the evaluation.

If the decision is made to allow entry into a place of refuge in United States waters, there are four major pre-conditions to actual entry. First, the party responsible for the ship (usually the owner) must provide adequate financial security for possible damages. If the ship already has a certificate of financial responsibility (COFR) under the Oil Pollution Act of 1990 (OPA 90), this condition will generally be met. If the ship does not have an OPA 90 COFR, it must post with the operational commander an acceptable letter of undertaking (LOU). This is most frequently done through the owner's Protection and Indemnity (P&I) Club. The responsible party must also prepare and submit to the operational commander a salvage plan and a transit plan. Finally, because individuals will be on or near the ship during the transit and the salvage/repair process, the responsible party must prepare and submit a site safety plan.

While the operational commander retains ultimate authority and may take unilateral action in urgent situations, the place of refuge process is intended to be a collaborative effort. If at all possible, consultations should be undertaken with the flag state where the ship is registered and with all nearby nations that might be impacted by the incident. The incident command system (ICS) is to be activated. This will lead to involvement by other affected federal, state, and local agencies, as well as the responsible party and other stakeholders. These other stakeholders may include, but are not limited to, the ship's classification society, the cargo owners, salvors, marine firefighters, spill response organizations, natural resource trustees, and local port authorities. One of the goals is to have a process where potentially affected parties have a voice in the decision-making process while keeping the decision-making authority clearly defined. Another goal is to bring together parties having important information related to the casualty. The classification society, for instance, generally has the most detailed information regarding the construction, alteration, and current physical condition of the ship. Most classification societies also have the ability to perform complicated analysis of the effect of structural failures or deficiencies and remedial measures on the ship's structural integrity. The cargo owners generally have the best information regarding proper handling of the cargo and dangers associated therewith.

Many coastal states have been in a situation where they have had to respond to a request by a ship in distress for entry into a place of refuge. A recent high-visibility example was the decision by the United Kingdom Secretary of State's Representative for Intervention and Salvage (SOSREP) to allow the MSC NAPOLI to enter British waters and intentionally ground offshore of Devon. Another example is the February 2007 decision of the Spanish authorities to allow the bulk carrier OSTEDIJK to be brought into coastal waters off the coast of Galicia so that a cargo fire onboard could be extinguished. In April 2004, South African Government authorities initially denied entry to the bulk carrier CAPE AFRICA until emergency repairs were completed offshore. Only then was the ship allowed into sheltered waters for off-loading of cargo and further repairs. In 1991, Australian authorities kept the damaged and blazing tanker KIRKI

offshore until the fire was extinguished and the weather abated. It was then allowed to enter sheltered waters so that the remaining cargo could be transferred. Even though most observers agree that these decisions were appropriate, the processes were not particularly transparent.

While most requests for entry into a place of refuge are granted by the coastal state, permission is sometimes denied. In 1980, the United States denied entry into sheltered coastal waters of southeast Alaska to the fire-damaged passenger ship PRINSENDAM, which shortly thereafter sank in the North Pacific. In 1971, South Africa denied entry to the damaged tanker WAFRA and eventually bombed and sank the ship on the high seas (the crew having been previously evacuated). In 1978, the tanker ANDROS PATRIA encountered heavy weather off Cape Finisterre. It developed a major crack in the hull, suffered an explosion and fire, and began leaking oil from the cargo tanks. Authorities from Spain, Portugal, France, and the United Kingdom all denied requests for entry. The tanker was eventually towed to a point approximately 250 miles south of the Azores Islands, where the remaining cargo was lightered. In 1979, the tanker ATLANTIC EMPRESS, loaded with 270,000 tons of crude oil, collided with another ship ten miles off the coast of Tobago. As a result of the collision, the tanker was holed and set ablaze. The Government of Trinidad and Tobago ordered the tanker to be towed 300 miles offshore where it sank, constituting the largest oil spill ever from a ship. In December 2000, numerous coastal states in the Mediterranean Sea denied entry to the tanker CASTOR, which was eventually lightered on the high seas off Malta. In December 1999, French authorities denied entry to the leaking tanker ERIKA, which ultimately sank on the high seas. In November 2002, the Spanish Government directed the tanker PRESTIGE further offshore when cargo tank bulkheads were collapsing, shell plating was falling off the side of the ship, large cracks developed on the main deck, and the ship was spilling oil. The tanker sank on the high seas. While the governmental decisions in each instance were probably correct, the lack of transparency created the possibility of misunderstanding and second-guessing.

The desire to regularize the process and to garner in advance the understanding and support of stakeholders and the public is what led the United States Government to develop and formalize the process for handling requests for entry into a place of refuge. The policy documents are publicly available, but it is nonetheless recommended that the federal government advertise the existence of the policy and include it in its various emergency response exercises. The policy documents should also be shared with other maritime nations. While those nations may not implement exactly the same policy, they should strongly consider adoption of a formal and public policy and process for handling the inevitable request for entry into a place of refuge.