



Pegasus Marine  
Consultancy Ltd.

# Independent Review into the Potential for Delays in the Contracting and Engagement of Salvage Services in Marine Casualties



**Final Report - March 2022**

Author: Hugh Shaw OBE, Pegasus Marine Consultancy



---

## Contents

<b>Foreword .....</b>	<b>3</b>
<b>Acronyms &amp; Abbreviations .....</b>	<b>4</b>
<b>The Review .....</b>	<b>5</b>
<b>Executive Summary .....</b>	<b>8</b>
<b>Main Report.....</b>	<b>17</b>
<b>Summary of Recommendations.....</b>	<b>46</b>
<b>Conclusions.....</b>	<b>52</b>
<b>Acknowledgements.....</b>	<b>54</b>
<b>References.....</b>	<b>55</b>
<b>Disclaimer and Copyright.....</b>	<b>55</b>

### FIGURES

<i>Figure 1</i>	<i>Survey demographic</i>
<i>Figure 2</i>	<i>Experience of delays</i>
<i>Figure 3</i>	<i>Initiation of contractual negotiations</i>
<i>Figure 4</i>	<i>Parties most influential in contractual negotiations</i>
<i>Figure 5</i>	<i>Parties that should have a principal responsibility for driving negotiations</i>
<i>Figure 6</i>	<i>Considerations that may contribute to delays</i>
<i>Figure 7</i>	<i>Choice of pre-reward or post-reward contracts</i>
<i>Figure 8</i>	<i>Salvage contract considerations</i>
<i>Figure 9</i>	<i>Lloyd's Open Form</i>
<i>Figure 10</i>	<i>Lloyd's Open Form</i>
<i>Figure 11</i>	<i>Decline in the uptake of LOF</i>
<i>Figure 12</i>	<i>Addition of Side Letters or Agreements</i>
<i>Figure 13</i>	<i>Usage and implications of side letters</i>
<i>Figure 14</i>	<i>Role of the maritime authorities in salvage situations</i>
<i>Figure 15</i>	<i>Future opportunities and education</i>
<i>Figure 16</i>	<i>Additional salvage contract related training</i>

## FOREWORD

For those who know, or have worked with me, you will fully appreciate that I do not have a legal background but have a maritime background of over forty years having served time as a deck officer in the merchant navy, before coming ashore and specialising in search and rescue and counter pollution operations prior to becoming the UK Secretary of State's Representative (SOSREP).

It is now four years since I retired from the Maritime and Coastguard Agency following my ten years in post as the SOSREP for maritime salvage and intervention and, prior to that, four years as the Deputy to the SOSREP.



Over my time as the SOSREP I was involved in over 700 incidents including the MSC NAPOLI, ICE PRINCE, YEOMAN BONTRUP, MSC FLAMINIA, HOEGH OSAKA and the V DUE.

Some of the casualties above were deemed to have had a textbook response. Others highlighted a reluctance on a number of occasions for some parties to engage promptly with salvors thus delaying the provision of salvage services.

I was fortunate that I had the ability to exercise the State intervention powers where I thought that delays, often caused by lengthy contractual discussions, were unacceptable, or on occasions where I considered that the 'correct' contract was not being used for the casualty and there was a risk for the situation to deteriorate.

In my opinion it is not for the State to determine the type of contract used, nor should it get involved in financial discussions, but it does have a role in determining that such a contract is fit for purpose, can be easily adapted for changes, is in the public interest and is awarded in a timely manner.

Although no longer at the sharp end of casualty response management I remain passionate in supporting any initiative that may prevent delays in maritime incidents, save life and protect the environment. It is therefore with this practical operational experience, and drive for continual improvement, that I present this review.



Hugh Shaw, OBE

Director Pegasus Marine Consultancy & Former UK SOSREP



---

## ACRONYMS & ABBREVIATIONS

ASG	Admiralty Solicitors Group
BIMCO	Baltic and International Maritime Council
DPA	Designated Person Ashore
EU	European Union
GA	General Average
H&M	Hull & Machinery
ICS	International Chamber of Shipping
IG P&I	International Group P&I Clubs
IMO	International Maritime Organisation
ISM	International Safety Management
ISU	International Salvage Union
IUMI	International Union of Marine Insurers
LOF	Lloyds Open Form (of Salvage Agreement)
LSAB	Lloyds Salvage Arbitration Branch
LSG	Lloyds Salvage Group
MAIB	Marine Accident Investigation Branch (UK)
NL	Netherlands
P&I	Protection & Indemnity
R&D	Research & Development
SCOPIIC	Special Compensation P&I Club Clause
SMS	Safety Management System
SOSREP	Secretary of State Representative (Maritime salvage & Intervention – UK)
TOWCON	Industry standard contract for ocean towage on lump sum basis
TOWHIRE	Industry standard contract for ocean towage on a daily hire basis

# 1 The Review

## 1.1 Preamble

- 1.1.2 Since the loss of the *AMOCO CADIZ* (1978) and other incidents such as the *BRAER* (1993), *SEA EMPRESS* (1996) and the *PRESTIGE* (2002) tighter and improved regulation-including effective port state control, improved ship design, technology, and more robust safety management systems have helped to eliminate substandard ships and reduce marine casualties.
- 1.1.3 In its Safety and Shipping Review 2021, “Allianz<sup>1</sup> reported the number of shipping incidents or casualties declined slightly from 2,818 to 2,703 in 2020. The British Isles, North Sea, English Channel and Bay of Biscay region saw the highest number of reported incidents (579), although this was down year-on-year. Annual shipping losses have halved compared with 10 years ago, although 2020 represented the first time in five years that losses have not continued to decline<sup>2</sup>”.
- 1.1.4 When faced with a marine casualty, shipowners, managers, operators and their insurers are faced with making an important decision regarding their choice of contract, in particular when the crew, vessel or the environment is at risk, or may become at risk if the situation deteriorates.
- 1.1.5 In 2020 the use of traditional LOF contracts was reported to be at a historic low confirming a continued decline in its use over recent decades. This decline has been well documented and there is a myriad of contributing factors including some of those mentioned above.
- 1.1.6 There is, though, a common acceptance that in the era of modern communication one of the principal reasons in the decline of the LOF contract is that it is possible for owners and/or their insurers to contract salvage services on terms they perceive to be more financially attractive.
- 1.1.7 The impact of the decline in using LOF is potentially far reaching. Existentially the salvage industry question whether, in the long term, there will be the capability to respond swiftly and adequately to a marine casualty where there is a risk to life and the environment without the enhanced awards that LOF contracts provide for.
- 1.1.8 There is, however, a growing concern that the declining use of LOF contracts also signals an increasing threat to the safety of life and the environment now more than before.
- 1.1.9 The threat is that of owners (or their insurers) delaying the contracting of salvage services to a vessel in peril as alternative options to an LOF contract are explored and negotiated.

---

<sup>1</sup> Allianz Global Corporate & Speciality (AGCS)

<sup>2</sup> Vessels over 100GT only

1.1.10 In late 2020 the International Group of P&I Clubs (IGP&I) commissioned this report and sought an independent, neutral and objective review that investigated the possible direct and root causes for delay in these circumstances and what changes might be made to eliminate or minimise the risks for such delays occurring.

## 1.2 Agreed Objectives for the Review

- (a) To engage with industry to corroborate whether the procurement of salvage services has in the past (or could in the future) be delayed when a vessel is in peril or is at risk of being in greater peril;
- (b) If corroborated, to explore the genesis of such delay and whether there is a link between the factors contributing to the overall decline in the use of the LOF contract;
- (c) To identify potential solutions to eliminate or minimise the risk of, and caused by, delay.

## 1.3 Methodology

- 1.3.1 Although commissioned by the IGP&I, I agreed to accept the review based on the understanding that I would have complete independence. I also sought to ensure that the findings and recommendations will be mine and will not be influenced by the review sponsors.
- 1.3.2 Significant effort was taken to ensure stakeholders that data would remain confidential and that responses would be consolidated without reference to any individuals or organisations.
- 1.3.3 In order to be as inclusive as practicably possible, the review sought feedback from a wide range of key stakeholders across the globe, including ship owners, ship managers, the insurance sectors, the salvage industry, marine consultants, tug & ship brokers, special casualty representatives, loss adjusters, barristers & arbitrators, lawyers & solicitors, academia, a selection of Coastal/Member States and Lloyd's Salvage Group.
- 1.3.4 A variety of methods to conduct the review were assessed and it was agreed that a survey questionnaire would be developed for electronic distribution to stakeholders. The questions combined multi-choice as well as open-style questions.



- 1.3.5 A second questionnaire was issued to capture any final comments from a wider stakeholder base and issued to a smaller number of stakeholders later in the process. However, the questions remained the same.
- 1.3.6 Although not my intention to promote one particular type of contract over another, I sought to conduct an objective assessment of the advantages/disadvantages of using pre-award or post-award contracts to ascertain if the potential for delays existed, and if so, explore and propose measures that could mitigate against such delays.
- 1.3.7 Shortly after accepting and commencing this commission, Lloyd's announced that it was considering whether to close its Salvage Arbitration Branch (LSAB) and leave the future administration of its Standard Form Salvage Agreement Lloyd's Open Form (LOF) in the balance.
- 1.3.8 However, following substantial feedback and representations from both Industry and Coastal States, Lloyd's made a further announcement in July 21 recognising the international maritime community's support of LSAB and LOF and stating that it was "determined to increase the use of the form and highlight the benefits that its use can bring."
- 1.3.9 As the declining use of the LOF could have an impact on the potential for delays, and the fact that Lloyd's had still to provide detail on any future change or amendments, the review decided to continue to seek feedback on its current usage and to seek views on alternatives, or options, should it not be available in the future.



## 2 Executive Summary

### 2.1 General Comments

- 2.1.1 Effective communications and co-operation between all those involved in casualty response operations is essential for success. Any delays in decision making can not only have a detrimental effect on the safety of life of those onboard but can ultimately determine the fate of the vessel, and its cargo, with the potential for consequential damage to the environment.
- 2.1.2 The Review considered several contributing factors that may have an impact on the potential for delays including the role of the Master, the choice of a commercial or Lloyd's Open Form (LOF)<sup>3</sup> contract, the use of side letters or agreements, the role and potential influence of the coastal States and importantly, the communications and collaboration between parties in casualty response operations.
- 2.1.3 Questionnaires were issued to over three hundred individuals and were completed by one hundred and twenty, giving a response rate of just under thirty-nine percent (39%) of the stakeholders contacted.
- 2.1.4 Although still represented, it was disappointing to note that the response from some regional hull and machinery underwriter/broker markets and shipowners / managers, was lower than expected.

### 2.2 Key Findings

#### **Delays are occurring and are on the increase.....**

- 2.2.1 There is little doubt that delays are occurring and appear to be on the increase. Over eighty percent (80%) of stakeholders felt that 'avoidable delays' in the contracting and engagement of salvage services might lead to the escalation of a situation to a point where significant damage, loss or danger to life might occur.
- 2.2.2 There appears to be no single cause, or single party, responsible for such delays but when looking at the evidence there are some contributing factors that would appear to have a much greater influence than others, namely:

---

<sup>3</sup> It can be argued by some that the use of an LOF contract with a side agreement attached is now a commercial contract





---

## 2.3 The role of the Master or Designated Person Ashore (DPA)

- 2.3.1 The Master's authority is to perform whatever acts that are necessary for the safe and proper prosecution of the voyage regarding both ship and cargo. More specifically, he/she is in charge of safety of the crew, vessel, cargo and to protect the marine environment.
- 2.3.2 In the past, a Master may have entered into a salvage contract without any discussion with the shipowners, and/or their insurers. However, today improvements in technology, coupled with the speed and availability of communication platforms, means that a Master can be in 24/7 contact with his/her office and emergency response plans, including classification society Emergency Response Service, can be activated with minimum delay. As a result, subject to the degree of urgency, there is some scope for an assessment of the situation, analysis of risks and a discussion on options prior to taking any decisions.
- 2.3.3 The survey highlighted the significant reduction on signing LOF services and the responsibility has been taken away from the master despite his/her knowledge and experience of the casualty, and their responsibility and authority in accordance with The International Safety Management Code<sup>4</sup>.
- 2.3.4 The consequences of delays in requesting, or agreeing salvage services can be disastrous, especially if there is damage, or the potential of damage, to the marine environment.
- 2.3.5 Where decisions are made on behalf of a master by, for example by a Designated Person Ashore (DPA), or another nominated person, then the review emphasised that such persons should be minded that the provision of salvage services needs to be taken without delay. Through close liaison, they should ensure that the master is satisfied that any proposals, or future intentions, meet his/her requirements given their knowledge and experience of the ship and on scene circumstances.

## 2.4 Choosing the salvage agreement

- 2.4.1 When faced with a marine casualty, Masters, shipowners, managers, operators and their insurers are faced with making an important decision regarding their choice of contract, when the crew, vessel or the environment is at risk, or may become at risk if the situation deteriorates.

---

<sup>4</sup> IMO Resolution A.741(18) 1993



- 2.4.2 The evidence gathered clearly showed that financial considerations significantly influence the choice of contract, or salvage services provided, and I believe that this does have an impact on delays – if not at the onset of the incident, then later in the incident, and if the situation deteriorates.
- 2.4.3 In the past, it was generally accepted that in an emergency where there was a need for urgency, and the risk of danger to life and/or the environment, then the prompt selection of a post reward contract such as LOF was in the best interests of all the parties.
- 2.4.4 Pre-reward contracts, such as BIMCO TOWCON/TOWHIRE would generally be the contract of choice for dealing with a vessel in no imminent danger or where there was no immediate threat to the crew or the environment.
- 2.4.5 In cases where uncertainty existed, prudent Masters, shipowners or their insurers, would err on the side of caution and opt for the contract they considered provided greater flexibility with little or no delay, and this was likely to be the LOF, or an equivalent national form.
- 2.4.6 **Today it is a lot less clear.** Evidence from the survey left me in no doubt that, in a corporate world where financial risk is very important, many of the parties, including some shipowners and their insurers, seek to have greater predictability or certainty over costs and, consequently, delays are more likely to be incurred as they endeavour to minimise their financial exposure.
- 2.4.7 What is clear is that not making or delaying a decision, rarely improves the situation and might restrict even further the response options that may be available.
- 2.4.8 Some maritime authorities confirmed that, in circumstances where they consider delays in the provision of salvage services as being unreasonable, then it is likely that they will become even more proactive in the future if they determine that there is risk to life or to the environment. In such cases, their ‘powers’ enable them to select a salvor, and the choice of an appropriate contract – at the shipowners expense.

## 2.5 Lloyd’s Open Form (LOF) – current and future challenges

- 2.5.1 As part of the study, the review considered the overall decline in the use of LOF to determine whether this contributed to delays today, and what impact any changes to LOF may have on delays in the future.
- 2.5.2 The survey found that there is a growing concern that the declining use of LOF contracts also signals an increasing threat to the safety of life and the marine environment. The threat is that of owners (or their insurers) delaying the contracting of salvage services to a vessel in peril as alternative options to an LOF contract are explored and negotiated to find a less expensive option.



- 2.5.3 LOF is designed to be signed immediately without need for negotiation, which in the context of a maritime casualty and this review, avoids any loss of time. The decisions and responsibilities lie with the contractor who can provide the resources deemed necessary to address changing circumstances and make timely changes to the plan, without the need for additional approvals, even where the task at hand differs from initially envisaged.
- 2.5.4 This not only allows the contractor to adapt, but also ties them in to continuing assistance and this is imperative where there is a risk of damage to the environment. Such a contract also helps mitigate reputational damage to shipowners and insurers. Moreover, it facilitates effective engagement with Authorities as the latter is in no doubt that it is the salvage master who “is in charge” of the salvage operation itself and how it is conducted.
- 2.5.5 So why the decline in the use of LOF? There are of course several contributing factors, including tighter and improved regulation-including effective port state control, improved ship design, technology, and more robust safety management systems leading to a decline in maritime casualties. But with a few exceptions and according to the survey responses, financial considerations appear to be the main driver.
- 2.5.6 The consensus from the review was that LOF is more expensive than a pre-reward or a ‘hybrid’<sup>5</sup> contract where Article 13 criteria is removed from the equation<sup>6</sup>.
- 2.5.7 As approximately seventy-five to eighty percent (75-80%) of LOF cases are settled, without publication, this does little to entice the ‘doubters’, and provide assurance, that LOF is a fair contract. For cases not settled, then mediation or arbitration will determine the award.
- 2.5.8 Whatever the final award, there is a wide range of views as to what constitutes a fair reward, when arbitrators are bound by the criteria within The Salvage Convention. There are strong views that some salvors’ demands can be disproportionate to the services offered (for low-medium risk incidents) and that this has ‘allegedly’ resulted in ‘higher than expected’ arbitration awards.
- 2.5.9 Overall, there was consensus that LOF was the ‘contract of choice’ where time was of the essence. It was felt that the ‘no cure-no pay’ provided additional incentive, was simple-straightforward to use and was effective. On a negative note, there were concerns over alleged ‘historic’ abuse / misuse, the time taken for the process and uncertainty over the award and the fact that it was expensive.
- 2.5.10 LOF can be more expensive, but in accordance with the requirements of the Salvage Convention<sup>7</sup>, the contract contains the elements of ‘incentivisation’ and

---

<sup>5</sup> LOF contract with a side letter or agreement intended to cap Article 13 award

<sup>6</sup> The Salvage Convention – Article 13 – criteria for fixing the reward

<sup>7</sup> Whilst in theory each different jurisdiction should apply the Article 13 criteria as set out in the Salvage Convention, the results can vary considerably.

‘encouragement’ required to attract interest from salvors and for them to invest in the future of the salvage industry.

- 2.5.11 Although many parties stated that they were not against LOF, there is ‘little’ evidence from some insurance underwriters that they support the principle of the form, and in particular the criteria for the assessment of salvage awards<sup>8</sup>.
- 2.5.12 However, the same parties using alternative contracts, or modified LOFs, still expect to have the benefits of a 24/7 provision of a salvage capability, but without making any ‘evident’ financial contributions towards the experience / readiness of salvors or availability of their equipment.
- 2.5.13 There was overwhelming support for the LSAB and the LOF, but it was recognised that changes would need to be made if the form itself was to remain a serious option for shipowners and their insurers, particularly when a Master deems that his/her vessel is in imminent danger with the potential of risk to life and the environment.

## 2.6 Side letters and agreements to LOF

- 2.6.1 Although not familiar with the practice when I retired in 2018, I was extremely surprised that feedback from the review highlighted that over eighty percent (80%) of recipients were familiar with the practice of side letter usage.
- 2.6.2 The evidence gathered indicates that in the main H&M underwriters are using side agreements to better manage their exposure to awards under LOF’s article 13.
- 2.6.3 Although the ISU disapprove of side agreements, contractors/salvors appear to be agreeing to, and accepting the terms, rather than risk losing the work to other salvage contractors. There is also a suggestion that contractors may use side letters offering more favourable terms to secure a contract.
- 2.6.4 Despite attempts to encourage the declaration of side agreements, there are indications that there is a substantially higher number in use than that notified to Lloyd’s Salvage Arbitration Branch (LSAB). Without the latter, then it is not possible for the SAB to fulfil their obligations and notify all the affected parties of the existence of such a document. Even if such notification takes place, I understand that its content is not disclosed. This does little to improve transparency, openness and trust and communications between the key stakeholders, and ultimately has the potential to lead to delays.
- 2.6.5 Side letters may limit costs for everyone apart from the salvors and appear to do little to contribute towards a sustainable and competitive salvage industry that we would all like to see and will need in the future.

---

<sup>8</sup> The Salvage Convention 1989

2.6.6 There is some opinion that without the use of side letters the usage of LOF will decline even further. However, side agreements appear to go against the very principle of LOF, and in the longer term, may have a detrimental effect on both the salvage industry and those who will require its services when faced with a significant maritime casualty.

## 2.7 Long-term future' of LSAB and LOF

2.7.1 If, following an internal review, Lloyd's of London ultimately decide to close the Salvage Arbitration Branch then it may potentially be the end of the world's foremost salvage contract and would likely have a very prejudicial effect on the reputation of the London insurance market.

2.7.2 The survey highlighted several potential options open to salvors, including the continued use of 'LOF contract wording', followed by a submission to Arbitration to determine any salvage claim. Secondly, salvage contractors could rely on their rights to bring a common law salvage claim in which ever jurisdiction the services were performed, and thirdly the usage of other national / standard form contracts in other jurisdictions may increase.

2.7.3 There was concern that we may see even fewer salvors to provide emergency response as they either concentrate on wreck removal, or other markets such as oil and gas decommissioning work. It is unlikely that salvors would continue to invest in new technology and/or new equipment to meet the challenges of larger vessels, carrying challenging cargoes and with more diverse fuel systems, without any 'financial encouragement'.

2.7.4 As many maritime authorities are imposing austerity measures it is unlikely that they will make any attempt, certainly in the short term, to plug any gaps in the provision of salvage services and will hold shipowners and their insurers accountable for dealing with marine accidents in a timely and proficient manner.

2.7.5 Many stakeholders suggested that if the decline in salvors continues, or if we see a reduction in R&D and/or new equipment to meet future challenges, it may mean that shipowners, and their insurers, may have to make their own arrangements to respond to marine casualties. OPA 90 equivalent arrangements (administered privately), the pooling of expensive salvage equipment and expertise (such as Oil Spill Response Ltd), were some of the suggestions put forward.

## 2.8 The Maritime Authorities

2.8.1 Ninety-four percent (94%) recognised the benefit of having a post holder, or competent authority, with the delegated authority to oversee a maritime casualty, and if necessary, exercise the State's intervention powers.



2.8.2 A few stakeholders acknowledged that coastal State ‘intervention’, or the threat of intervention, had a positive effect in influencing ‘faster or rapid’ decision making, when lengthy contractual negotiations were ongoing. This is recognition that delays are occurring and need to be reduced, or minimised.

2.8.3 It is imperative that all parties recognise the benefits of dialogue with the Maritime Authorities as soon as practicable. Any failure to liaise with the representative(s) coastal States in a timely manner may lead to delays or risk the potential of being ‘directed’ to take specific action, and that may be more costly.

## 2.9 Education and Training Opportunities

2.9.1 It is evident from the review that many organisations including shipowners, H&M and P&I insurers, LSAB, ISU/salvage companies, global law firms, nautical establishments, universities, marine consultants, maritime authorities all engage in providing some degree of internal and external education and training.

2.9.2 However, there was a feeling that perhaps the ‘correct individuals’ are not always targeted, or provided with factual and ‘unbiased’ information, that may assist them in making key decisions and help minimise delays.

2.9.3 As an example, it was felt that DPAs should be better informed to enable them to challenge the choice of salvage contract, where there may be a difference of opinion between a shipowner’s property and liability insurers.

2.9.4 The survey has highlighted the need for education and training to be better co-ordinated, and to be delivered, as much as practicable, by joint cross-industry initiatives.

## 2.10 Cross-Industry Code of Practice / Guidelines

2.10.1 The review has highlighted the need for all parties to demonstrate their commitment towards preventing or minimising delays in the procurement and provision of salvage services.

2.10.2 There is a need for improved communications, de-briefing/ post-mortems, sharing of experiences and learning from mistakes made, greater collaboration and to recognise the benefits of a competitive, and sustainable, salvage industry in the future.

2.10.3 There also needs to be greater ‘accountability’ across the industry.

2.10.4 Although there are several extant codes of practice, they mainly address financial matters and do little to encourage communications and greater collaboration.



2.10.5 In essence, the lack of agreed practices and procedures does little to mitigate against the likelihood of delays – in fact it may even contribute towards them!

## 2.11 Communications

2.11.1 Effective co-operation between all those involved in casualty response operations is essential for success. At the onset of an incident the list of parties who will have a key role is diverse and will include the shipowner or manager/operator, H&M underwriters, brokers, P&I insurers, Cargo Insurers, legal advisors, etc. and all will generally have their own agenda and desired outcome. This is before salvors, consultants and other players become involved.

2.11.2 However, whilst I am in no doubt that there are many ‘best practices’ across the industry, I do not consider the current communications, collaboration, or trust between parties, to be its greatest strength and there is certainly room for improvement.

2.11.3 Throughout the review I have continually read evidence that has referred to a lack of transparency, lack of trust, the need for more openness, a reluctance to engage, a lack of synergy with parties looking after their own interests and there has been little evidence of stakeholders working together with a common goal of reducing, or minimising the risk to life, the vessel, its cargo and the marine environment.

2.11.4 From the review, many stakeholders also felt that communications and collaboration could, and should, be greatly improved thus ensuring that each of the parties is kept abreast of developments and can openly express their views throughout the duration of the incident, not only when they have the lead for a particular phase.

2.11.5 Cargo interests were singled out as potentially being left in the dark more often than many of the other parties. Any future codes of practice, or guidelines, should ensure that Cargo interests are ‘rightly’ included.

2.11.6 The importance of collaboration and the timely provision / exchange of accurate information on the ship and its cargo in a salvage is essential.

2.11.7 I accept that each of the stakeholders will have their own interests to consider. However, even when another party has the ‘lead or primacy’, there are added benefits in sharing experiences and this should lead to improved decision making, less delays and may result in financial benefits for all, if that is the goal.

## 2.12 The main recommendations from the Review are summarised below:

1. When decisions on salvage contracts are made on behalf of a master by a DPA or other nominated person, they should have received appropriate training, understood the advantages and disadvantages of salvage agreements when opting for one or



another, appreciate the risks and consequences of delays and the possible legal exposure.

2. It is imperative that LSAB note the content of this report and address the market's concerns that there needs to be more transparency and openness whilst demonstrating that the award criteria provides for a fair award, for all parties and for the services rendered.

If the LOF is to remain a 'competitive' salvage contract for a wider cross section of incidents, then the LSAB will need to address the disparity between LOF and other commercial contract costs.

There is a clear educational need for LSAB to ensure that the benefits of the LOF are understood by all parties. In addition, it needs to demonstrate that the necessary safeguards are in place to provide assurance that the contract, and principle of the form, is not compromised by abuse or misuse.

3. An Education Steering Group/Committee on Salvage Contracts, Services & Operations should be established, with an independent (non-partisan chair), and cross-industry representatives. The 'Group' should identify current education and training needs/gaps, existing best practice and develop and implement education and training strategies to meet future needs, in collaboration with industry experts, nautical establishments and universities.
4. Industry stakeholders, with the support of maritime authorities, should work together to develop, and implement, a Cross-Industry Code of Practice/Guidelines. These will promote greater collaboration in the 'procurement and provision of salvage services', aim to prevent or minimise delays and recognise the need for a sustainable salvage industry in the future.

Such a document could also promote best practice and serve as an invaluable reference document for all stakeholders, but in particular for new entrants into the industry.

5. It is imperative that all parties recognise the benefits of dialogue with the Maritime Authorities as soon as practicable. Any failure to liaise with the representative(s) coastal States in a timely manner may lead to delays or risk the potential of being 'directed' to take specific action that may be more costly.

## 3 Main Report

### 3.1 Scope

3.1.1 The Main Report addresses the following:

- The Project Plan for the Review and how it is sub-divided;
- The Review Methodology;
- Survey Questionnaire(s) and Responses

3.1.2 The main outcomes from the survey including:

- Experience of delays in management of salvage situations;
- Role of the Master, Shipowner and the DPA;
- Choosing the appropriate salvage agreement and the potential for delays;
- Lloyd's Open Form;
- Side Letters and Agreements;
- Future LSAB/LOF Arrangements;
- Role of Maritime Authorities;
- Cross-Industry Code of Practice / Guidelines;
- Communications;
- Recommendations and Final Conclusions.

### 3.2 Project Plan

3.2.1 The project was split into stages as follows:

- |         |  |
|---------|--|
| Stage 1 | Preparation of Project Initiation Document (Project Plan).<br>This included a list of key stakeholders that would be consulted.                |
| Stage 2 | Preparatory Work. This included preparation of an introductory letter and a survey questionnaire that would be distributed to gather feedback. |
| Stage 3 | Stakeholder Engagement. Electronic distribution of letter and survey to the main group of stakeholders. <sup>9</sup>                           |

---

<sup>9</sup> In July 2021, and in response to increasing interest from Industry, the IG appointed a 3<sup>rd</sup> party to distribute the survey questionnaire.

- Stage 4      Analysis of Stakeholder Feedback and other data sources.
- Stage 5      Preparation of draft and Final Report including Conclusions and Recommendations.

### 3.3 Review Methodology

- 3.3.1 Significant effort was taken to assure stakeholders that data would remain confidential, and their responses would be consolidated without any reference to company or individuals.
- 3.3.2 In order to be as inclusive as practicably possible, the review sought feedback from a wide range of key stakeholders across the globe, including ship owners, ship managers, the insurance sectors, the salvage industry, marine consultants, tug & ship brokers, special casualty representatives, loss adjusters, barristers & arbitrators, lawyers & solicitors, academia, a selection of coastal/member States and Lloyd's Salvage Group.
- 3.3.3 A variety of methods to conduct the review were assessed and it was agreed that a survey questionnaire would be developed for electronic distribution to stakeholders. The questions combined multi-choice as well as open-style questions. A second questionnaire was issued to capture any final comments from a wider stakeholder base and issued to a smaller number of stakeholders later in the process however the subject matter and questions remained the same<sup>10</sup>.
- 3.3.4 As the declining use of the LOF could have an impact on the potential for delays, and the fact that Lloyd's had still to provide detail on any future amendments, this review decided to continue to seek feedback on its current usage and to seek views on alternatives, or options, should it not be available in the future.

### 3.4 Survey Questionnaire(s) and Response

- 3.4.1 The Review considered several contributing factors that may have an impact on the potential for delays including the role of the Master, the choice of a commercial or Lloyd's Open Form (LOF)<sup>11</sup> contract, the use of side letters or agreements, the role and potential influence of the coastal States and importantly the communications and collaboration between parties in casualty response operations.
- 3.4.2 The survey consisted of twenty-two questions, including eight multi choice, and fourteen requiring free text responses.

---

<sup>10</sup> 2<sup>nd</sup> survey questionnaire issued in Dec 2021

<sup>11</sup> It can be argued by some that the use of an LOF contract with a side agreement attached is now a commercial contract

- 3.4.3 As part of the process, recipients were also given the opportunity to have a 1:1 discussion following the submission of their questionnaire. To encourage engagement and openness, all stakeholders were granted an assurance of anonymity.
- 3.4.4 During Stage 3, preliminary quantitative information was presented to the Salvage and Wreck Conference<sup>12</sup> and this generated some additional input to the overall process.
- 3.4.5 Questionnaires were issued to over three hundred individuals and were completed by one hundred and twenty, giving a response rate of just under thirty-nine percent (39%) from the stakeholders contacted. Eighty-seven stakeholders requested a 1:1 follow-up discussion. Although still represented, it was disappointing to note that the response from some regional hull and machinery underwriter/broker markets and shipowners / managers, was lower than expected.

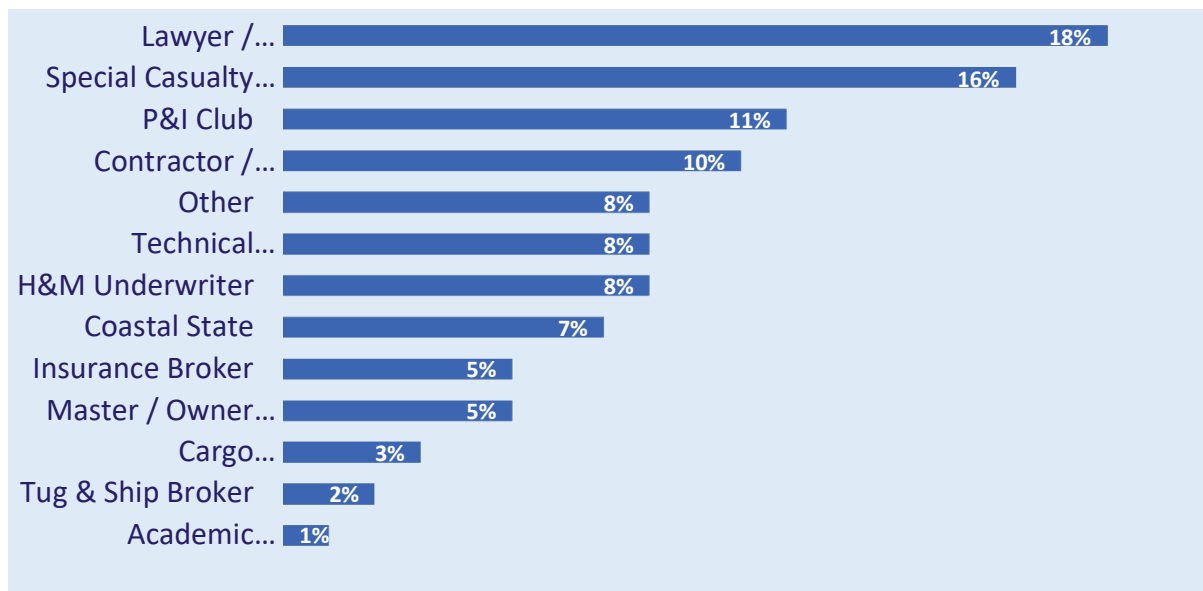


Figure 1. Survey Demographic

<sup>12</sup> London, Dec 2021



### 3.5 The Main Outcomes:

#### 3.5.1 Experience of Delays in the management of salvage situations

3.5.2 In order to corroborate whether the provision/procurement of salvage services has in the past (or could be in the future) been delayed when a vessel is in peril, or is at risk of being in greater peril, recipients were asked to comment on their personal experience. (Base 105) (Fig.2)

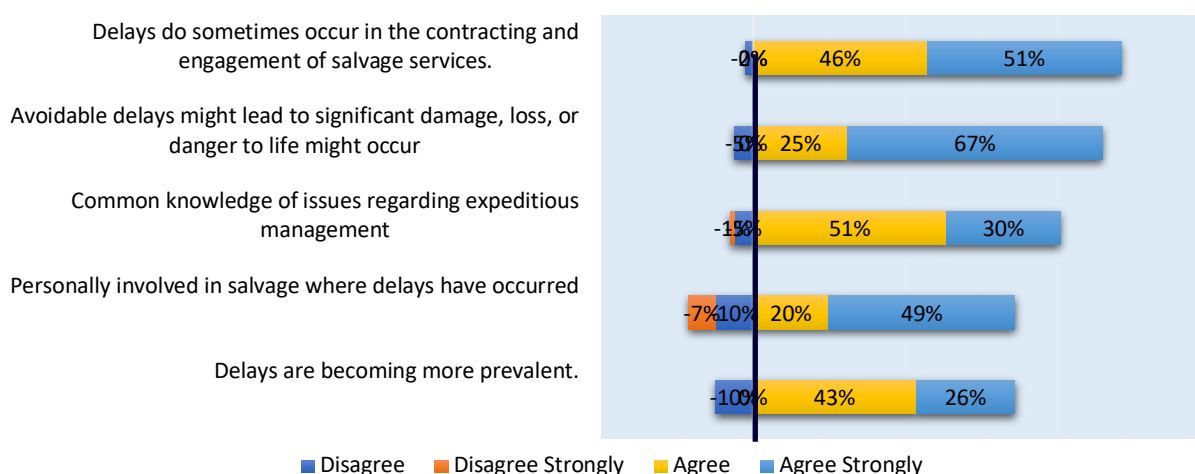


Figure 2. Experience of delays

3.5.3 There is little doubt that delays are occurring and appear to be increasing. Over eighty percent (80%) of respondents felt that ‘avoidable’ delays in the contracting and engagement of salvage services might lead to the escalation of a situation to a point where significant damage, loss or danger to life might occur. Sixty-nine percent (69%) stated that they had been personally involved where delays have occurred and nearly seventy percent felt that delays were becoming more prevalent.

3.5.4 There appears to be no single cause, or single party, responsible for such delays but when looking at the evidence there are some factors that would appear to have a much greater influence than others, namely:

### 3.6 Role of the Master, the shipowners, and the Designated Person Ashore (DPA)

3.6.1 Most masters or shipowners will be lucky enough to get through their careers without needing salvage assistance for one of their vessels and, absent prior experience of casualties, it would be unlikely that they will have an intimate knowledge of the different types of salvage contract available to them. **Others are not so fortunate!**





- 3.6.2 *In fact, I recall dealing with an incident in 2015, where a vessel ran aground at full speed. It was the master's final voyage, and with his retirement less than '400 miles' nautical miles away, it was his first incident and experience of marine salvage after a lengthy career at sea.*
- 3.6.3 The Master is responsible for ensuring that all international and local laws are followed properly, and that all management policies are fully complied with and for communicating with shore authorities, in response to oil spills or other accidents. The consequences of delays in requesting, or agreeing salvage services can be disastrous, especially if there is damage to the environment.
- 3.6.4 In the past, a Master may have entered into a salvage contract without any discussion with the shipowners, and/or their insurers. However, modern day improvements in technology, coupled with the speed and availability of communication platforms, means that a Master can be in 24/7 contact with his/her office and emergency response plans can be activated with minimal delay. As a result, and subject to the degree of urgency, there may be some scope for an assessment of the situation, analysis of risks and a discussion on options prior to taking any decisions.
- 3.6.5 Although the Master is on scene, has the best knowledge of his/her ship and the developing situation, and remains in command, the number of masters that sign or agree salvage services, has reduced significantly over the years except for a few geographical areas where either port or maritime authorities may request such salvage agreements to be implemented without delay<sup>13</sup>.
- 3.7.7 Due to several factors masters may be 'influenced<sup>14</sup>' by their superiors, insurers or legal advisors not to enter into a contract or, they may not have the delegated authority to do so on behalf of the company<sup>15</sup>. Regrettably, such policies may lead to criminalisation of the Master, officers and crew if it is deemed that they were negligent in their response to the incident.
- 3.6.8 Recipients who have been personally involved, and have had recent experience of delays, were asked which party initiated the contractual negotiations. (Base105) (Fig.3)

---

<sup>13</sup> Feedback suggests that a few Masters' may be signing LOF contracts in the Westerschelde area, NL.

<sup>14</sup> Shipowners/managers may have access to additional information such as ERS, or have a greater knowledge on availability of salvage services

<sup>15</sup> MAIB Accident Investigation Report 15/2020 into the grounding and subsequent salvage of the THEA II reported that delays were due to the ship manager's lack of awareness of their vessel's situation. The situation was only resolved after the threat of State intervention.

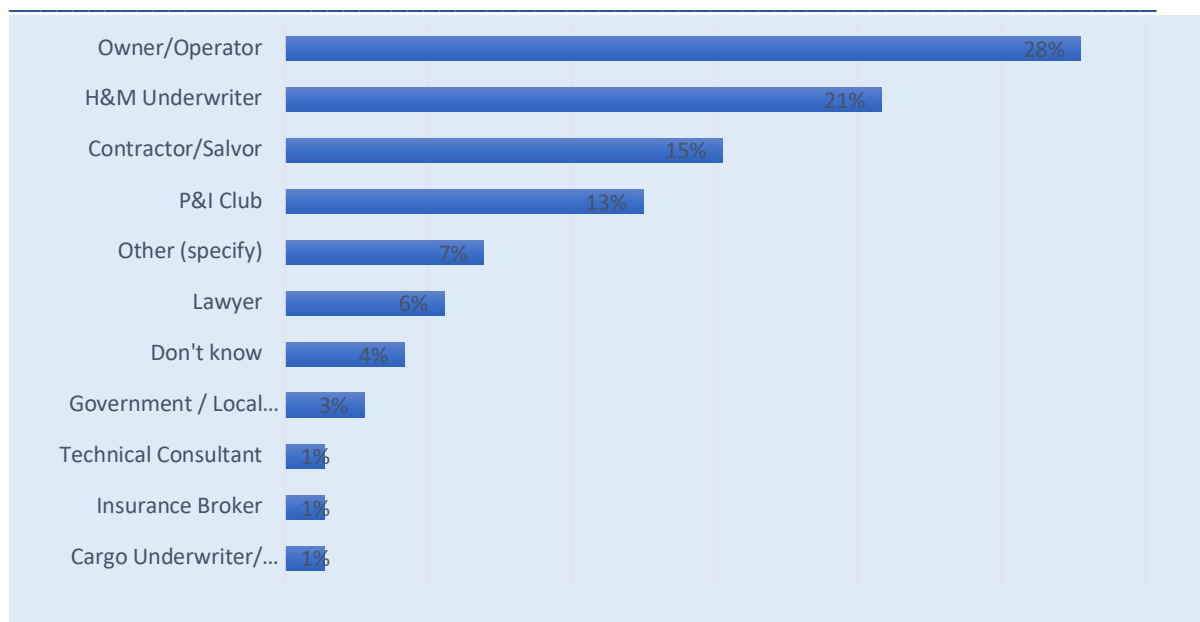


Figure 3. Initiation of contractual negotiations

3.6.9 The parties felt to be most influential in driving contractual negotiations confirmed the fact that a shipmaster today has little, if any, influence over contractual negotiations. There is concern that the ‘top 5’ influencers – contractor/salvor, H&M, shipowners, legal advisors and P&I, look after their own interests and exposure, and this in itself, may lead to uncertainty regarding the best way forward, and increase the potential for delays. (Base=72) (Fig.3)

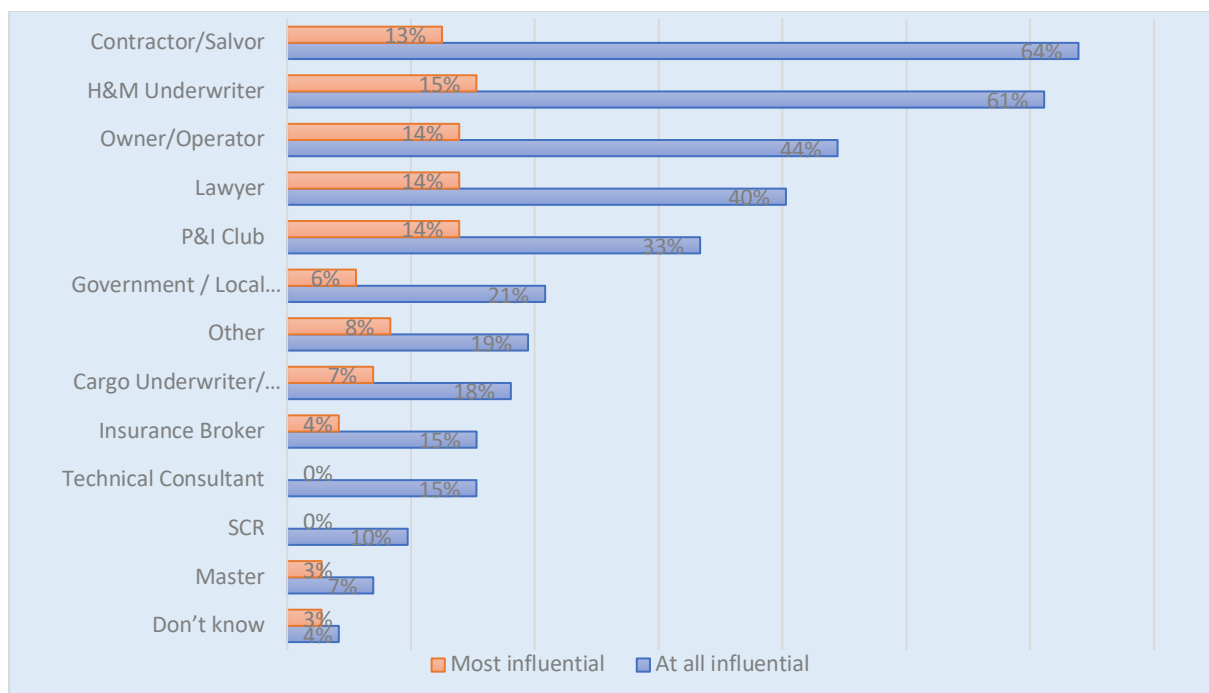


Figure 4. Parties most influential in contractual negotiations.

3.6.10 When asked which parties ‘should’ have principal responsibility for driving the contractual negotiations in an incident requiring the provision of salvage services, it was interesting to note that the position, and authority, of the master had been recognised and it was felt that he/she should play a greater part in influencing decisions although with communications as they are today, it is unlikely that a shipowner will allow a master to agree any contract without due consultation, except in extreme circumstances. It is also interesting to note that legal advisors were not mentioned. (Base=72) (Fig.4)

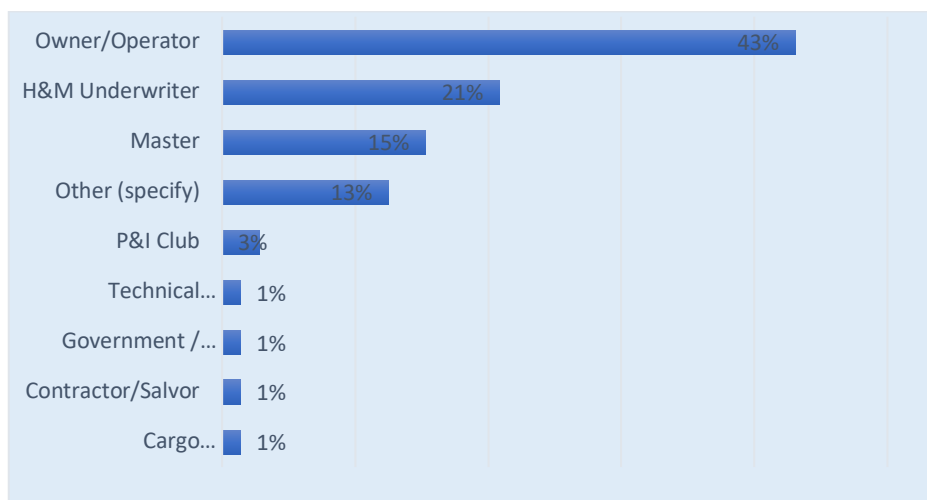


Figure 5. Parties that should have a principal responsibility for driving negotiations

### 3.7 The Designated Person Ashore (DPA)

3.7.1 In accordance with The International Safety Management Code (ISM) the Designated Person Ashore (DPA)<sup>16</sup> plays a key role in the effective implementation of the Safety Management System (SMS) and takes responsibility for verification and monitoring of all safety and pollution prevention activities. The DPA ‘usually’ has a seafaring background and is an established figure in the shipping company / ship management company. However, he/she may not have any seagoing experience. It was therefore felt that, as a minimum, a DPA should be familiar with the different types of salvage

<sup>16</sup> MSC-MEPC.7/Circ.6 GUIDANCE ON THE QUALIFICATIONS, TRAINING AND EXPERIENCE NECESSARY FOR UNDERTAKING THE ROLE OF THE DESIGNATED PERSON UNDER THE PROVISIONS OF THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE



agreements, including their advantages/disadvantages and associated risks, if the situation was to deteriorate.

- 3.7.2 Where DPAs' are given authority to agree, or approve a contract, then it is essential that they are fully briefed by the Master and have a sound understanding of what is developing on scene.
- 3.7.3 In addition, it would only seem appropriate that there is more transparency and accountability around such a proxy, whether it be the company DPA or another designated person and this should be made clear in the company SMS.
- 3.7.4 Of course, there will be exceptions where the circumstances of a casualty and its associated risks allow for a little more time to decide but where this is not the case and delays will pose safety and environmental risks, prompt decision making is paramount.

### 3.8 Choosing the salvage agreement and the potential for delays

- 3.8.1 Effective communications and co-operation between all those involved in casualty response operations is essential for success. Any delays in decision making can not only have a detrimental effect on the safety of life of those onboard but can ultimately determine the fate of the vessel, and its cargo, with the potential for consequential damage to the marine environment.
- 3.8.2 In the past, it was generally accepted that in an emergency where there was a need for urgency and the risk of danger to life and/or the environment, then the prompt selection of a post reward contract such as LOF was in the interests of all the parties and that such a contract would lead to significant time savings. The form is a straight-forward contract, can be quickly signed in an emergency when time is of the essence, and avoids lengthy negotiations over terms and conditions. The salvage contractor is free to promptly mobilise resources deemed necessary for the immediate and longer term as circumstances dictate.
- 3.8.3 Pre award contracts, such as BIMCO TOWCON/TOWHIRE would generally be the contract of choice for dealing with a vessel in no imminent danger, where there was time, and where there was no immediate threat to the crew or the environment.
- 3.8.4 In cases where uncertainty existed, then prudent masters, shipowners or their insurers, would err on the side of caution and opt for the contract they considered provided greater flexibility with little or no delay, and this was likely to be the LOF, or an equivalent standard national form. **Today it is a lot less clear!**
- 3.8.5 The response to the survey confirmed that financial considerations significantly influence the choice of contract, or salvage services provided, and I believe that this



does have an impact on delays – if not at the onset of the incident, then later in the incident, if the situation deteriorates.

- 3.8.6 In a corporate world where financial risk is very important, many of the parties’, including some shipowners and their insurers, seek to have greater predictability or certainty over costs and, as a consequence, delays are more likely to be incurred at the onset of the incident as they endeavour to minimise their financial exposure, or later on and ‘changes’ occur, where a contract has been agreed but with tight constraints or limitations around the salvage plan.
- 3.8.7 Over fifty-four percent (54%) considered that financial considerations were a very significant contributor to delays as shipowners and their underwriters sought ways to reduce their financial exposure. An additional thirty-two percent (32%) felt that it was an important contributor.
- 3.8.8 I fully appreciate that the nature of dealing with a maritime incident can often mean making decisions based on scant or uncollaborated information. This uncertainty also raises questions as to the best course of action.

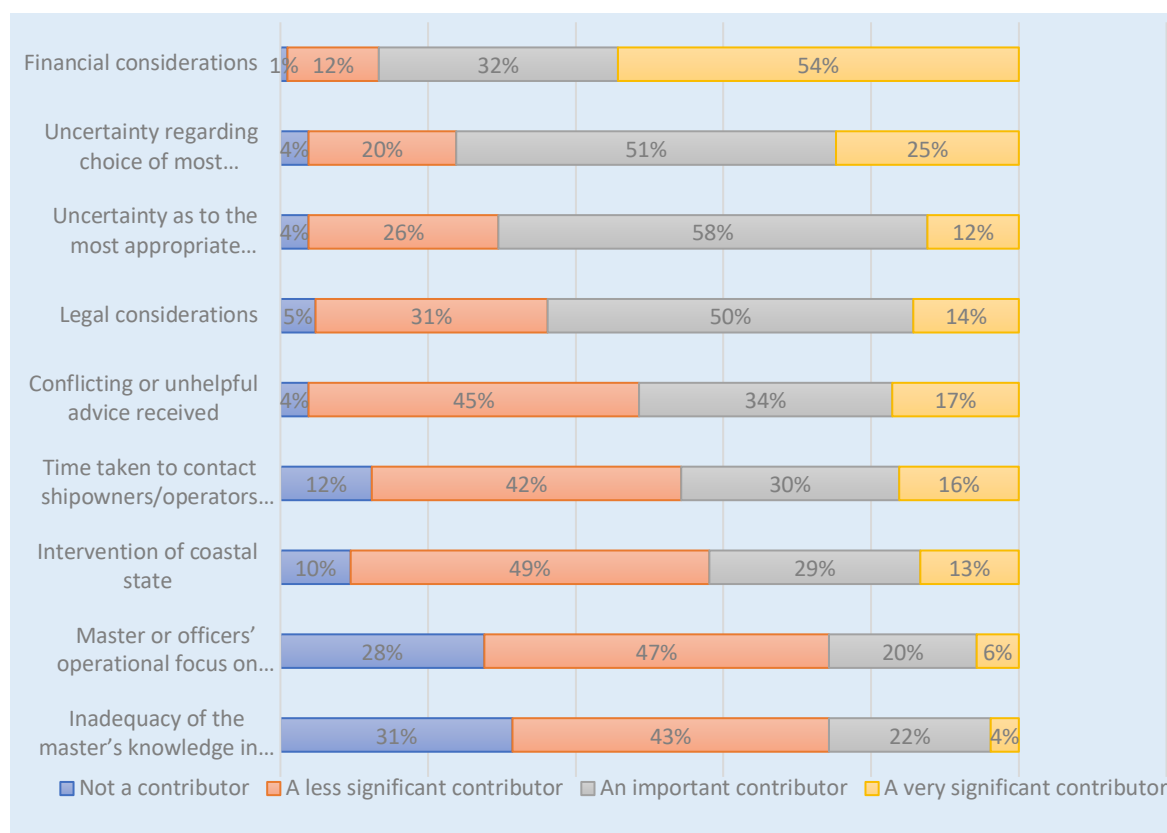


Figure 6. Considerations that may contribute to delays (Base+105)



3.8.9 I also accept in cases where ‘uncertainty’ exists then decision makers, in particular the less experienced, may have to seek guidance or assurance from other colleagues or other parties including their legal advisors or consultants, and this itself can take up crucial time and have a significant impact on delays.

3.8.10 However, if delays are being incurred for financial gain alone, then by seeking to pay the minimum for salvage services, the parties involved are potentially compromising the safety of lives, the vessel, its cargo and the environment. Not taking, or delaying a decision rarely improves the options available. In many instances, delays can increase costs at the end of the day.

3.8.11 I was disappointed to hear that a ‘blame culture’ still exists in some organisations, and some underwriters felt that they would be blamed, with possible retribution, for making the wrong, or a more costly decision regarding their choice of a salvage agreement.

3.8.12 Recipients were asked to what extent they agreed or disagreed with each of the following statements?

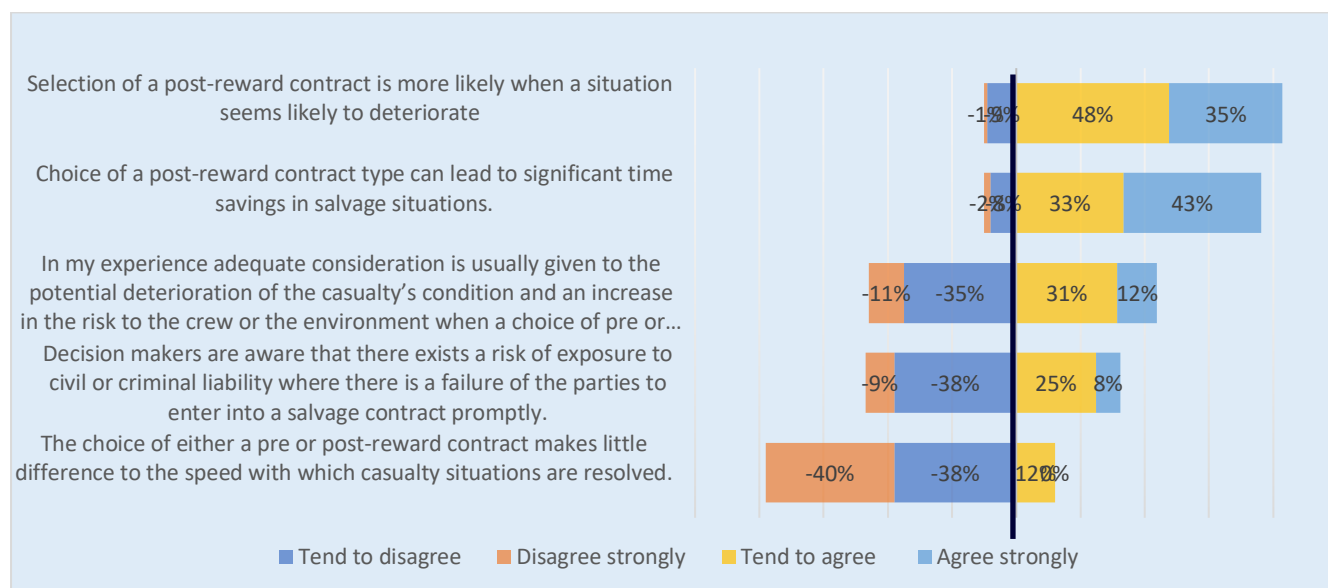


Figure 7. Choice of pre-reward or post-reward contracts (Base=105)

3.8.13 There was little doubt that the selection of a post-reward contract is favoured when a situation seems likely to deteriorate. There was also recognition that such a contract can also lead to significant time savings. More concerning was the fact that forty-six percent (46%) felt that inadequate consideration is usually given to the potential deterioration of the casualty’s condition with an increase in the risk to the crew and the environment. Surprisingly, nearly fifty percent (50%) may not have considered their risk of exposure to civil or criminal liability where there may be deemed to have been a failure of the parties to enter into a salvage contract promptly.





3.8.14 When asked what considerations were taken into account when opting for a particular contract, it was perhaps pleasing to note that pollution and the threat to the environment was a significant factor. However, it was surprising to see that the crew safety and welfare had been relegated to fourth position. Also of interest is that only thirty percent (30%) considered that the potential legal/civil exposure of the master was an important, or very significant consideration. I would be interested to see how much this may change if a company DPA was held accountable for any decisions taken with little, or no input, from the master. (Fig. 8)

3.8.15 Several stakeholders felt that a post award contract, such as the LOF, could be used for all incidents and equally a number had a view that, if properly managed, commercial contracts could also meet all scenarios. However, the majority felt that each case should be considered on its own merits which should, but not always, lead to the most appropriate form of contract.

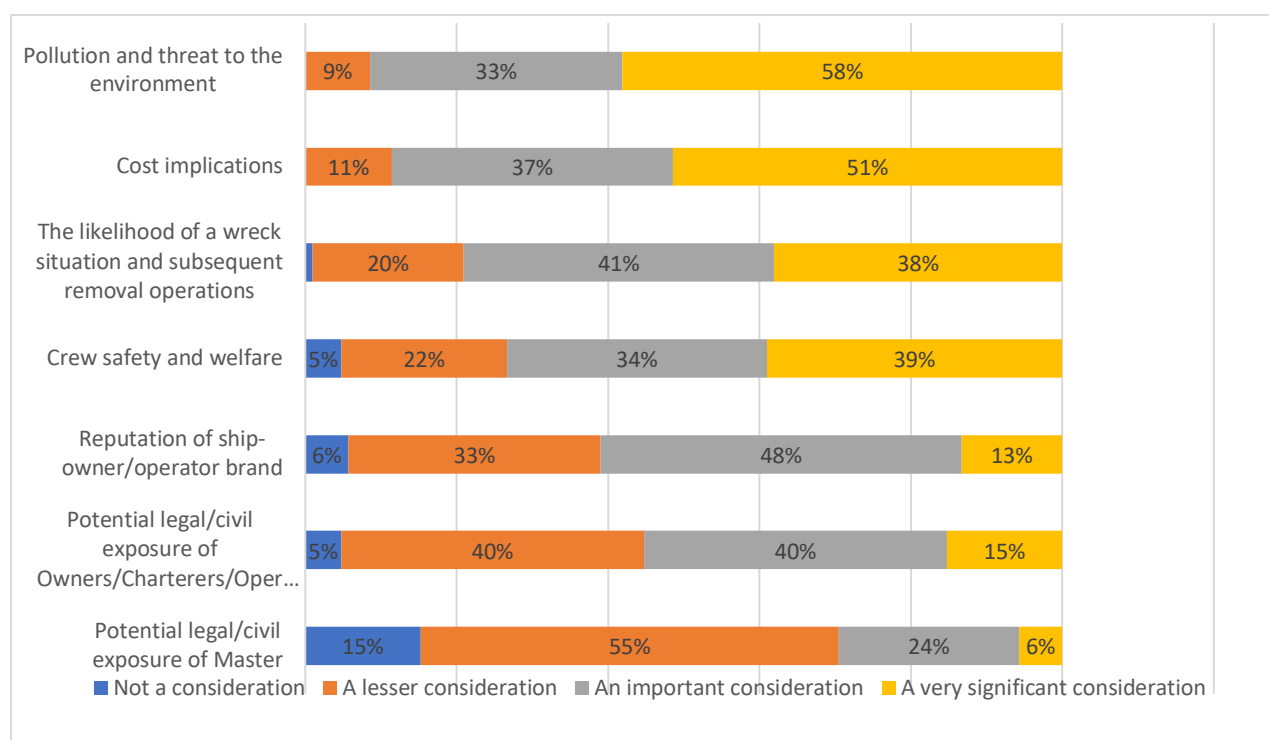


Figure 8. Salvage contract considerations. (Base+105)

3.8.16 It was clear from my findings that cultural differences, or different markets, may have a different approach and many respondents referred to the practices of the Scandinavian market and the ‘pro-active’ approach taken by their Hull & Machinery and P&I underwriters. There is evidence where, in some cases, salvors have been mobilised to incidents where no contract has been agreed or finalised. Whilst this may mitigate against the potential for delays, the risks need to be fully understood and such an ‘agreement’ also requires a great deal of trust between the parties.



3.8.17 Where delays in the provision of salvage services are deemed as being ‘unreasonable’ by the State, there is a growing sense that maritime authorities will be even more proactive in the future if they determine that there is risk to life or to the marine environment. In such cases, States may exercise their intervention powers, appoint a salvor using ‘their’ choice of salvage agreement, and at the shipowner’s expense, until the incident is resolved. This is not only likely to be substantially more costly but may also cause significant reputational damage to the shipowner.

### **3.9 Lloyd’s Open Form (LOF)**

3.9.1 As part of the study, the review considered the overall decline in the use of LOF to determine whether this contributed to delays today, and what impact any changes to LOF may have on delays in the future.

3.9.2 Originating from the late 1800s, the LOF has been in use for more than a century. It provides a regime for determining the amount of remuneration to be awarded for salvage services on “no cure-no pay” basis with an award for success based on the values of the property saved.

3.9.3 LOF places a burden upon the salvor to use ‘best endeavours’ while executing the contract. In other words, most of the commercial risk, if not all, lies with the salvors. Alternative salvage contracts do not contain the requirement for ‘best endeavours’ and as a result shipowners and their insurers are expected to take more of the risk.

3.9.4 LOF is designed to be signed immediately without need for negotiation, which in the context of a maritime casualty and this review, avoids any loss of time. The decisions and responsibilities lie with the contractor who can address changing circumstances and make timely changes to the plan, without the need for additional approvals, even where the task at hand differs from initially envisaged. This not only allows the contractor to adapt, but also ties it in to continuing assistance. This is imperative where there is a risk of crew safety or damage to the marine environment. Such a contract also helps mitigate reputational damage to shipowners and insurers.

3.9.5 The use of LOF also facilitates effective engagement with Authorities as the latter is in no doubt that it is the salvage master who “is in charge” of the salvage operation itself, and through the SCOPIC clause, if invoked, there is compensation for salvors preventing or minimising damage to the environment.

3.9.6 In 2020 the use of traditional LOF contracts (34) was reported to be at a historic low confirming a continued decline in its use over recent decades. The significance of the decline in the LOF contract to the marine and salvage industry is unknown but potentially far reaching.



3.9.7 Following their announcement in May 2021 that it was considering closing its Salvage Arbitration Branch (LSAB) with the potential loss of the LOF itself, Lloyd’s should not have been surprised by the substantial feedback and representations from industry and governments. Whilst the LOF may have its critics, the benefits and advantage of the form has widespread support – even from those who seek not to use it!

3.9.8 To understand their current views on LOF, recipients were asked to what extent they agreed or disagreed with each of the following statements?

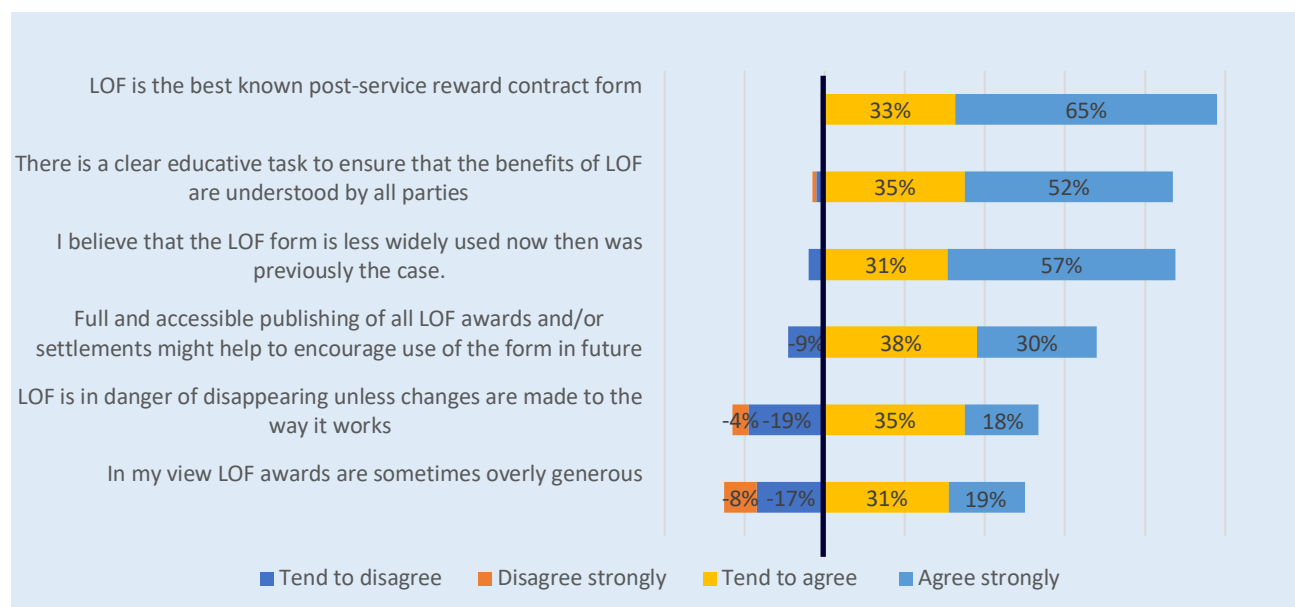


Figure 9. Lloyd’s Open Form. (Base=105)

3.9.9 There is little doubt that LOF is the best-known post-service award contract and there was the acknowledgement that its usage is on the decrease. In support of the form, eighty-seven percent (87%) felt that there is a clear educative task needed to ensure that the ‘benefits’ are understood by all parties.

3.9.10 Many stakeholders felt that the publishing of all awards and/or settlements might help to encourage use of the form in the future. However, there was also strong opposition to this with some saying that the publication of settlements may mean that fewer LOF contracts are signed.

3.9.11 For parties not willing to disclose settlement awards then this could result in more going to arbitration with resulting higher costs. It is for Lloyd’s to address how they promote the LOF, but I agree that there needs to be more openness and transparency if the form is to have a future.

3.9.12 Interestingly, although fifty percent (50%) of stakeholders agreed / strongly agreed that LOF awards were sometimes overly generous, twenty five percent tended to disagree /



disagree strongly. Twenty five percent (25%) stated that they had insufficient insight to give their opinion. It does add some weight to the argument that improved publishing of settlements / awards in the future may encourage greater use of the form in the future.

3.9.13 There is, however, a growing concern that the declining use of LOF contracts also signals an increasing threat to the safety of life and the marine environment. The threat is that of owners (or their insurers) delaying the contracting of salvage services to a vessel in peril as alternative options to an LOF contract are explored and negotiated to find a cheaper option.

3.9.14 In order to explore this further, recipients were asked to what extent do you agree or disagree with each of the following statements?

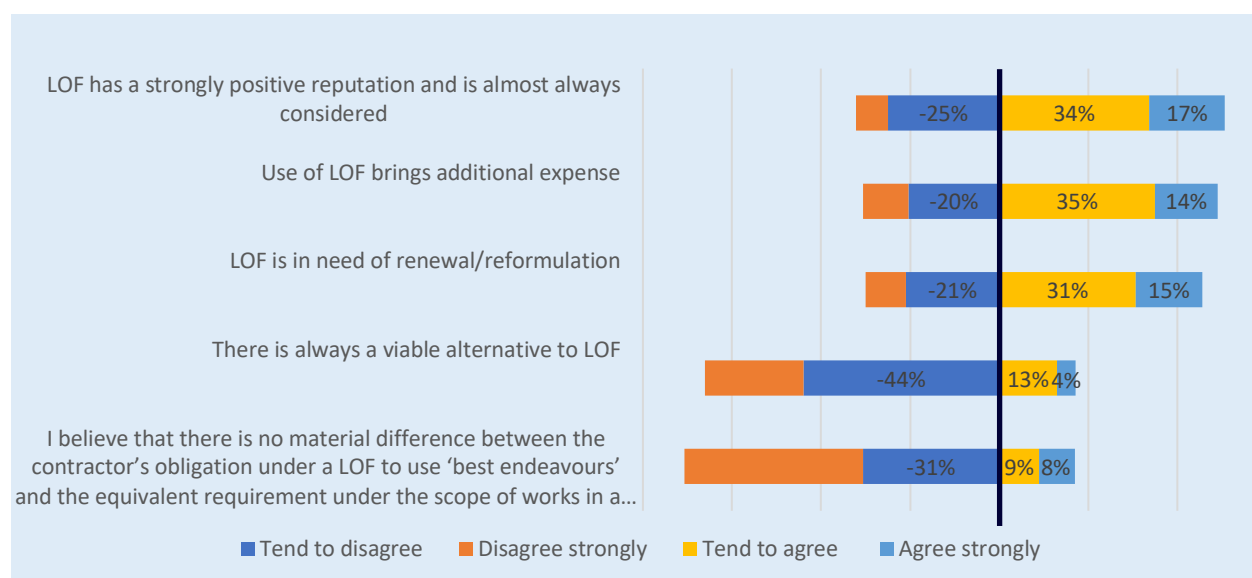


Figure 10. Lloyd's Open Form. (Base=105)

3.9.15 From the feedback I have received, I do believe that LOF is 'almost always' considered. However, I think that it is also dismissed 'almost immediately' by some parties – and, at times, without regard to the casualty or the potential of the situation deteriorating.

3.9.16 This is an area where I feel that there needs to be more 'accountability', if there is an impact on the risk to safety, and/or to the environment.

3.9.17 Although it is deemed that there is not always a viable alternative contract, the fact that it is considered to be more costly, is usually the determining factor. With few exceptions, respondents attributed the decline in the uptake of LOF to financial considerations. (Fig.11)

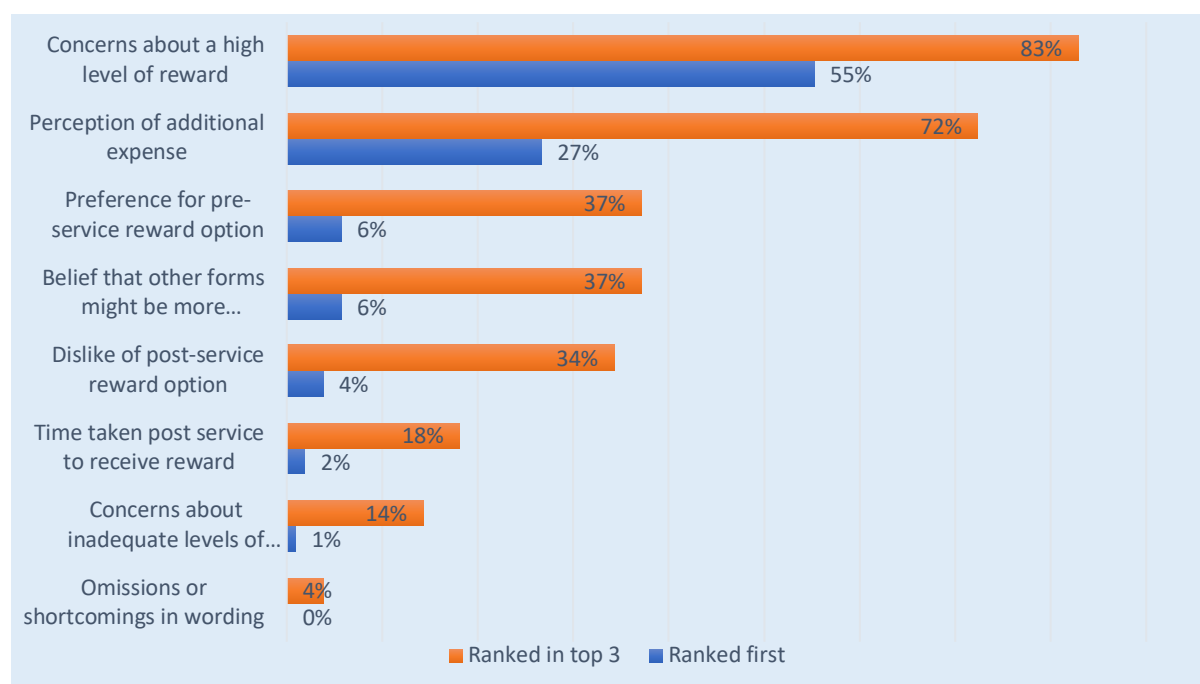


Figure 11. Decline in the uptake of LOF. (Base=105)

- 3.9.18 Concerns about high levels of award, coupled with ‘perceptions’ of additional expense, account for over eighty percent (80%) of the response. Again, there is perhaps a need for greater transparency around levels of reward and, for the latter, a need to address these ‘perceptions’ through improved education.
- 3.9.19 For parties seeking greater predictability, or a degree of certainty over potential costs, then for some the fact that seventy-five to eighty percent (75-80%) of LOF cases are settled, without publication, does little to give some parties the assurance that it is a fair contract.
- 3.9.20 For cases not settled, then there is a need for mediation or arbitration, and this can add more time and costs.
- 3.9.21 Whatever the final award, there is a wide range of views as to what constitutes a fair reward when arbitrators are bound by the criteria within The International Convention on Salvage 1989<sup>17</sup>. There are strong views that some salvors demands can be disproportionate to the services offered and this has ‘allegedly’ resulted in ‘higher than expected’ arbitration awards.

<sup>17</sup> The International Convention on Salvage 1989 introduced uniform international rules for maritime salvage operations. The ‘Convention’ recognises the major contribution which efficient and timely salvage operations can make to the safety of vessels and other property in danger and to the protection of the environment



- 3.9.22 Some consider the ‘Convention’ to be out of touch with current practices. It is the foundation upon which our salvage industry, and its response to marine casualties, is built today. Article 13 provides the criteria for ‘fixing’ rewards and encouraging salvors. The ‘Convention’ introduced the SCOPIC<sup>18</sup> Clause, a “safety net” in the form of Special Compensation in cases where a salvor performs salvage operations in respect of a vessel which by itself or its cargo threatened to damage the environment.
- 3.9.23 The Convention requires arbitrators to consider factors which are not restricted to the salvage service in question. A number of stakeholders stated that awards should consider the equipment and resources maintained by the salvor appointed. However, it was alleged that an ‘uplift’ can frequently be applied where a salvor maintains very little of their own equipment or resources but calls upon those of third parties.
- 3.9.24 Although I found very little evidence from H&M underwriters that they buy into the system and methodology for the assessment of salvage rewards, some mentioned that if there was greater transparency that the money was going towards R&D, new technology/equipment, then this would reaffirm faith in the LOF.
- 3.9.25 Overall, there was consensus that the LOF contract was ‘best’ where timely intervention was required. It was felt that the ‘no cure- no pay’ provided additional incentive, it was simple-straightforward to use and was effective.
- 3.9.26 On a negative note, there were concerns from some over the potential for abuse / misuse.
- 3.9.27 LOF can be more expensive, but in accordance with the requirements of the Salvage Convention<sup>19</sup>, the contract contains the element of ‘encouragement’ required to invest in the future of the salvage industry.
- 3.9.28 Parties using alternative contracts, expect to have the benefits of the 24/7 provision of a salvage capability without making any contribution<sup>20</sup> and this does feel unjust.
- 3.9.29 Perhaps ISU should recommend to its members that they should consider adding a ‘salvage availability/equipment’ levy to all pre-award contracts.
- 3.9.30 Although various quarters of the insurance industry deem LOF to be too costly and will either prefer a commercial pre award contract, or an LOF contract with a capped Article 13 (by use of a ‘side letters’ or ‘side agreement’) they are perhaps working with a short-term horizon and may in fact be contributing towards the closure

---

<sup>18</sup> Special Compensation P&I Clause (SCOPIC).

<sup>19</sup> Whilst in theory each different jurisdiction should apply the Article 13 criteria as set out in the Salvage Convention, the results can vary considerably.

<sup>20</sup> Without transparency it is unclear if any salvors are given an uplift.



of Lloyd's Salvage Arbitration Branch (and perhaps the LOF itself) and a contracting salvage industry that we are already witnessing today.

- 3.9.31 By conveniently avoiding costs or contributions such as, the state of readiness and efficiency of the salvor's equipment, the promptness of the services rendered and the skill, efforts and experience of the salvors in salvaging a vessel, property and protecting or minimising damage to the environment they are perhaps simply throwing the baby out with the bathwater.
- 3.9.32 They will have no recourse to the invaluable salvage services that are offered to them today. This would certainly have a significant impact on delays in the future as owners and insurers would have to provide their own mitigation measures – with the potential for much greater financial losses!
- 3.9.33 Perhaps more needs to be done to explain why LOF contracts can be more costly than alternatives but also explain the consequences of not having a competitive salvage industry.

### **3.10 Side letters and agreements**

- 3.10.1 Although not familiar with the practice when I retired in 2018, I was extremely surprised that feedback from the review highlighted that over eighty percent (80%) of recipients were familiar with the practice of side letter usage.
- 3.10.2 Unless it is proven that 'side letters' or 'side agreements' contribute to delays in the awarding of a suitable contract for salvage services it could be argued that it has little place within this review. However, if side letters agreements are influencing the decision regarding the choice of contract, then in my opinion this has the potential to incur delays.
- 3.10.3 Most of the practitioners using side letter agreements openly stated that it was introduced to a LOF to better manage their exposure to awards under LOF's article 13.
- 3.10.4 There is concern that, by altering the terms of a standard LOF, this may cause a change in contractual liabilities and risk allocation between the parties. There are allegations that, on occasions, 'badly written' side letters may have been used to the detriment of other contributing interests, who may still have to pay the original, or possibly an even greater amount.
- 3.10.5 Despite attempts to encourage declaration of side agreements, there are indications that there is a substantially higher number in use than that notified to Lloyd's Salvage Arbitration Branch (LSAB). Without the latter, then it is not possible for LSAB

to fulfil their obligations and notify all the affected parties of the existence of such a document, and even if such notification takes place, I understand that its content is not disclosed. This does little to improve transparency, openness and trust, and ultimately communications between the key stakeholders and has the potential to lead to delays.

3.10.6 So, who is ‘allegedly’ responsible for the ‘addition’ of a side letter or agreement?

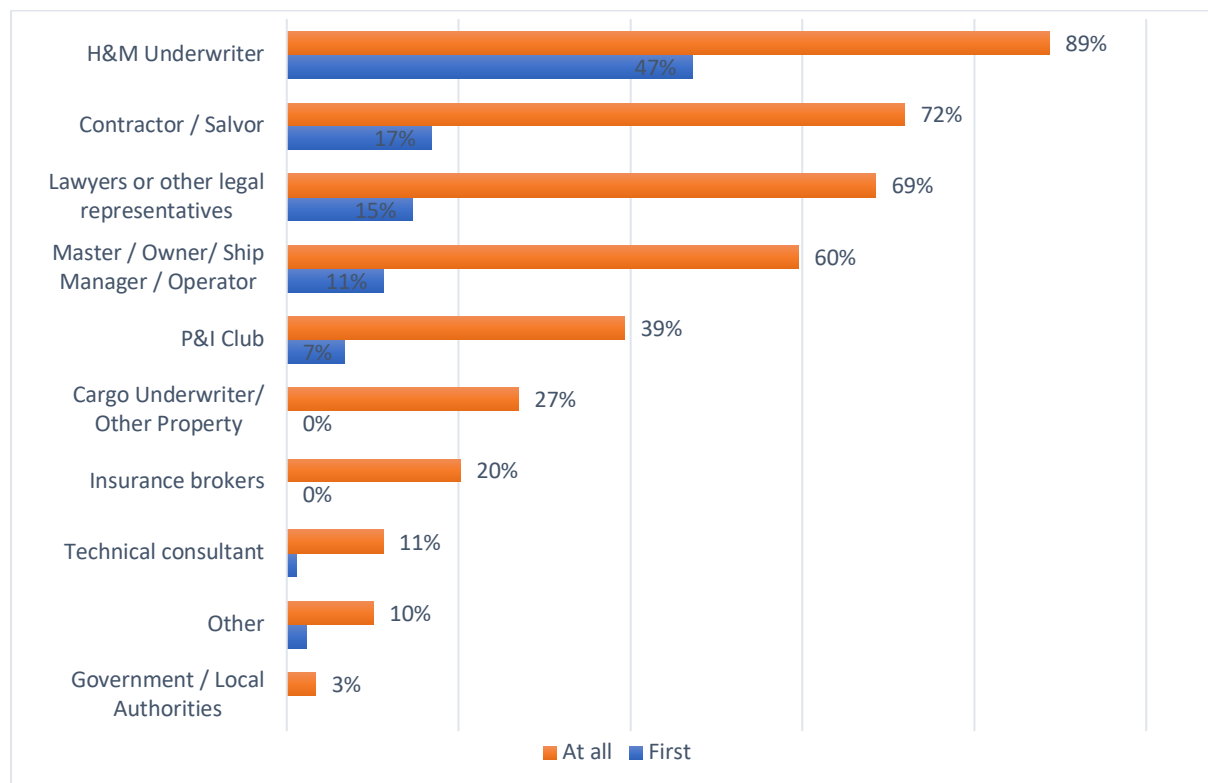


Figure 12. Addition of Side Letters or Agreements. (Base=89)

3.10.7 The evidence would appear to suggest that in the main, H&M underwriters are using side agreements to ‘cap’ Article 13 awards. Contractor/salvors appear to be agreeing to, and accepting the terms, rather than risking losing the work to other salvage contractors. There is also a suggestion that contractors may use side letters offering more favourable terms to secure a contract.

3.10.8 Respondents were asked to what extent they agreed to the following:

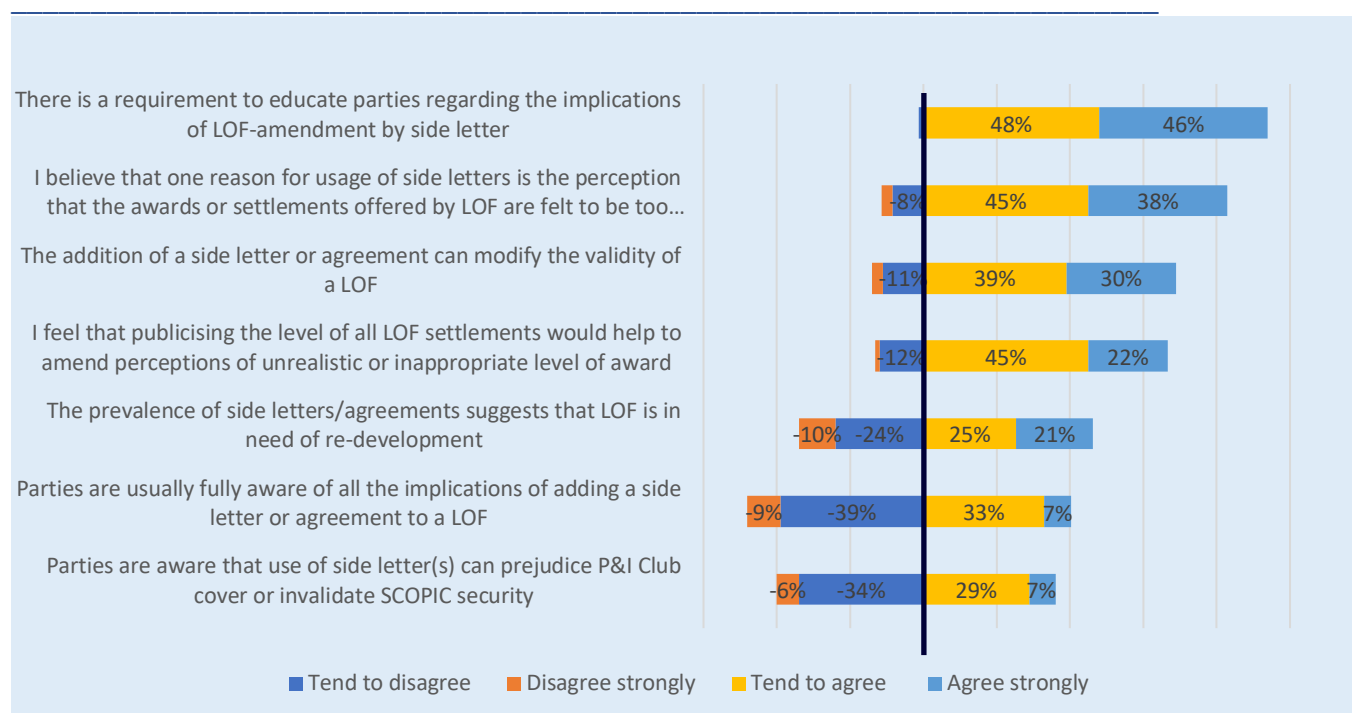


Figure 13 Usage and implications of side letters. (Base=89)

3.10.9 I did note a particular dichotomy, with some insurance organisations offering both P&I and H&M products, where on one hand members are warned about the risk of jeopardising their P&I cover if they enter into a side agreement, but on the other hand H&M are using side letters to cap Article 13 awards.

3.10.10 In my opinion side letters or agreements do little to help build trust, openness and transparency between parties. They may limit costs for some parties and, from my limited knowledge on the subject, they appear to do little to contribute towards a sustainable and competitive salvage industry that we would all like to see, and will need, in the future.

3.10.11 There is some opinion that without the use of side letters the usage of LOF will decline even further. My own opinion is that they go against the very principle of LOF, and in the longer term, will have a detrimental effect on both the salvage industry and those who will require its services when faced with a significant maritime casualty.

3.10.12 If parties are looking for greater financial certainty, but also wish to have many of the benefits of the LOF itself, then perhaps there is a need for the LSAB to see if there is scope to accommodate change that would be a compromise and acceptable to all parties.

3.10.13 This would remove the need for side letters or agreements and there would certainly be more transparency.

3.10.14. Over recent years, as LOFs are being entered into with caps, or on commercial terms, there have been various suggestions regarding an “additional form” that could

complement the LOF and be used for less urgent cases. One such suggestion mentioned frequently in the review was the LOF “Lite”<sup>21</sup>.

- 3.10.15 Feedback suggested that initiatives such as LOF “Lite” should be further explored, however, there was also concern that unless integrated into the LOF itself, then a future choice between LOF, LOF “Light” or another alternative contract could cause even more delays.

### 3.11 Future Arrangements

Whilst it is recognised that Lloyd’s made an announcement in July 21 recognising the international maritime community’s support of LSAB and LOF and stating that it was “determined to increase the use of the form and highlight the benefits that its use can bring”, stakeholders were asked to consider what the future may look like if the decision was reversed at a later date.

The questions covered the use of alternative salvage forms and alternative ways of funding salvage operations should there be no Salvage Convention ‘Article 13’ equivalent.

#### Salvage Forms

- 3.11.1 There could be several potential options open to salvors, including the use of ‘LOF contract wording’, followed by a submission to Arbitration to determine any salvage claim. Secondly, salvage contractors could rely on their rights to bring a common law salvage claim in which ever jurisdiction the services were performed, and thirdly the usage of other national / standard form contracts in other jurisdictions may increase.

#### Salvor availability and funding

- 3.11.2 There is a possibility that we may see even fewer salvors to provide emergency response as they either concentrate on wreck removal, or other markets such as oil and gas decommissioning work. It is unlikely that salvors would continue to invest in new technology and/or new equipment to meet the challenges of larger vessels, carrying challenging cargoes and with more diverse fuel systems.
- 3.11.3 Many stakeholders suggested that if the decline in salvors continues, or if we see a reduction in R&D and/or new equipment to meet future challenges, it may mean that shipowners, and their insurers, may have to make their own arrangements to respond to marine casualties. OPA 90 equivalent arrangements (administered privately), the pooling of expensive salvage equipment and expertise (such as Oil Spill Response Ltd), were some of the suggestions put forward.

---

<sup>21</sup> Clyde & Co (2017)



- 3.11.4 Other potential funding mechanisms included (a) a levy based on the number of container movements based on US\$1 cent per box that is paid into a central fund to be administered by Lloyds or the General Average Adjusters; and (b) a percentage of any insurance premium paid to the H&M and P&I underwriters paid into a central fund to be administered by Lloyds or the General Average Adjusters.
- 3.11.5 Whilst none of these solutions are perfect, and are likely to raise objections, it does highlight the fact that at the end of the day shipowners, property and liability insurers or cargo interests would have to find the funding from somewhere and unless there was close collaboration between all the parties then some may find themselves paying substantially more than others.
- 3.11.6 For example, a regulatory mandate that compels one segment of the marine community i.e., the containership fleet to provide private support through contract or other means for salvage would place a disproportionate burden on one segment of the industry to pay for and provide salvage services for the overall industry and the public good.
- 3.11.7 Some stakeholders felt that maritime authorities would step up to the mark. However, as many maritime authorities are imposing austerity measures it is unlikely that they will make any attempt, certainly in the short term, to plug any gaps in the provision of salvage services and will hold shipowners and their insurers accountable for dealing with marine accidents in a timely and proficient manner.
- 3.11.8 Several stakeholders suggested local coastal ‘State’ salvors, funded by dues paid by shipowners, to ensure adequate cover to protect the environment and interests of the state, with awards also payable by those receiving salvage assistance.
- 3.11.9 In summary, the loss of the LSAB, could have a devastating impact on coastal states due to the various parties’ potential inability to come to contractual salvage arrangements in the absence of LOF. Consequently, a casualty vessel may be left unattended by salvors as they would have no certainty on being able to recover their costs
- 3.11.10 I hope that Lloyd’s, and LSAB, continue to see the LOF as a marketable contract and one that should remain a serious option for shipowners and their insurers, particularly when a Master deems that his/her vessel is in imminent danger with the potential of risk to life and the environment.
- 3.11.11 Whilst there is a clear educative task to ensure that the benefits of the form are understood by all parties, it is imperative that Lloyd’s listen to the market, and their ‘potential users’ concerns that there needs to be more transparency.



3.11.12 They also need to demonstrate that the award criteria provide for a fair award, for all parties, for the services rendered. In addition, it needs to demonstrate that the necessary safeguards are in place to provide assurance that the contract, and principle of the form, is not compromised by any abuse, or misuse.

3.11.13 There were also several suggestions regarding the future work of the SAB, and these included, the re-introduction of Lloyd’s Open Form Digests and having a greater role in the collection of GA security, although I understand that other organisations may be looking at this issue.

### 3.12 Role of the maritime authorities

3.12.1 There is no uniformity as to how maritime administrations deal with casualty response globally with each coastal State having its own rules and requirements.

3.12.2 Some governments have recognised the benefit of a post holder, or competent authority, often with the delegated authority to exercise the State’s intervention powers in the event of a maritime incident. Ninety-four percent of respondents recognised the benefit of such posts such as the MERCON (Australia), HAVERIEKOMMANDO (Germany), MARITIME PREFECT (France) and the SOSREP (UK).

3.12.3 Stakeholders were asked to what extent they agreed with the following statements regarding the role of national marine authorities in salvage situations?

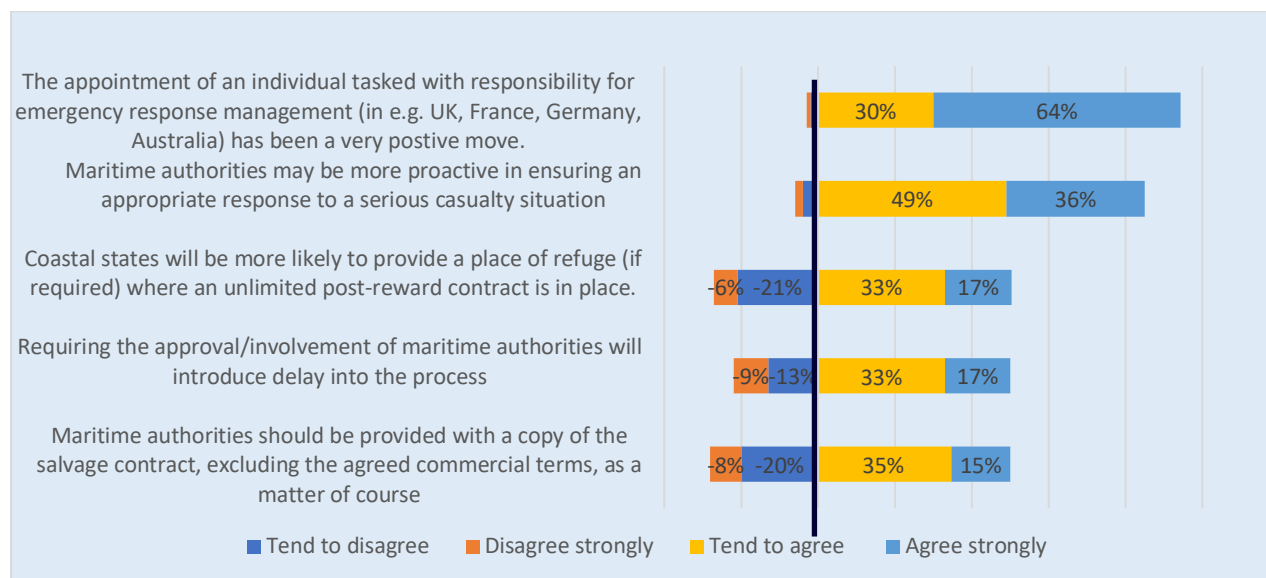


Figure 14. Role of the maritime authorities in salvage situations. (Base+105)

- 3.12.4 Most stakeholders recognised the benefit of having an individual tasked with the responsibility for overseeing maritime casualties and intervening where it was deemed to be in the public interest.
- 3.12.5 Although fifty percent (50%) recognised the potential for maritime authorities to introduce delays there are mitigation measures that Masters', DPAs and insurers can implement by simply contacting the State as soon as possible and maintaining a sensible dialogue thereafter.
- 3.12.6 It was noted that representatives from both H&M and P&I interests acknowledged that State 'intervention' had a positive effect in influencing 'faster or rapid' decision making, when lengthy contractual negotiations were ongoing.
- 3.12.7 Interestingly fifty (50%) felt that coastal States would be more likely to provide a place of refuge (if required) where a post award contract was in place. Whilst not suggesting that I prefer one type of contract over another, the need for financial guarantees from ports or some jurisdictions is well documented. Another major concern for a State, is the scenario where a pre-award contract could discourage completion of services if the casualty deteriorated.
- 3.12.8 Once notified of an incident within its jurisdiction, the coastal State will need to be satisfied that any actions being taken, or being proposed, are in the public interest and this includes the type of contract and details of the salvage services / plan being considered.
- 3.12.9 In situations where there is State concern that parties have failed to award a suitable contract within a reasonable timescale, then certainly in the UK, the SOSREP may intervene and, if deemed necessary, award a contract to a salvor of their choice, and at the shipowner's expense.
- 3.12.10 Delays can then create an additional burden for the Government response to engage with the responsible parties and remind them of their obligations to advise on their future plans and intentions. Similarly, on occasion, negotiations are conducted, concluded and then presented to the administration *fait accompli*, and contracts needed to be subsequently changed as the initial contract does not meet the Government's expectations or requirements. Early engagement between the responsible parties could have prevented those changes or delays
- 3.12.11 Concerned that that impact from delays can have an adverse effect on local communities, and their social values, I was advised that coastal States, in some regions around the globe, are seeking not only 'additional' intervention powers, but the authority to use them earlier, to help mitigate against such circumstances.
- 3.12.12. It is therefore imperative that parties recognise the benefits of entering into dialogue with the State representative(s) as soon as practicable. Although some P&I Clubs are



extremely proactive at doing this, unfortunately from my experience this is not always the case and delays have been caused. A few stakeholders remarked that maritime authorities should be more proactive in making early contact with H&M underwriters and P&I liability insurers following the notification of a maritime incident.

#### 3.12.13 IGP&I Ship Search Facility

3.12.14 With the IG providing liability cover for approximately ninety percent (90%) of the world's ocean-going tonnage this is generally a good starting point, if information from the vessel in difficulty is sparse. The IG ship search facility<sup>22</sup> is a tool that can be freely accessed to obtain information on all vessels that are listed on the ship search facilities of the International Group Clubs. ([www.igpandi.org](http://www.igpandi.org))

#### 3.12.15 Identification of H&M Underwriters

3.12.16 Establishing the identification of the H&M underwriters can be a greater challenge. As the former SOSREP, I was extremely fortunate to have a team within the Maritime and Coastguard Agency that could provide 24/7 support to me in identifying the key stakeholders and establish initial dialogue.

3.12.17 Whilst the level of support made available to me was not unique, not all maritime authorities are as fortunate, and this may result in substantial delays at a crucial phase in the response to the incident.

3.12.18 During the course of this incident I have been unable to establish if there is a central database of vessels and their corresponding H&M underwriters that can be easily accessed

### 3.13 Education and Training Opportunities

3.13.1 The need for education and training has been raised on numerous occasions throughout the review.

3.13.2 When asked to consider their priorities, stakeholders responded as follows:

---

<sup>22</sup> The vessel search data has been prepared for informational purposes only, and is not intended to provide, and should not be relied for legal or other purposes.

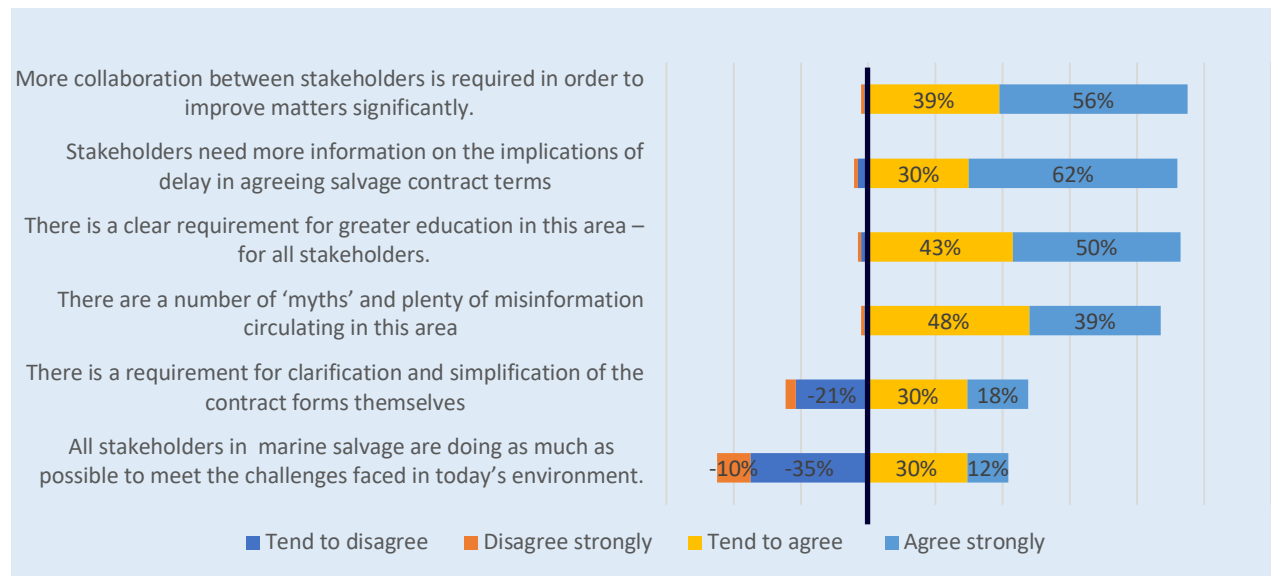


Figure 15. Future opportunities and Education. (Base=105)

3.13.3 Ninety-two percent (92%) felt that more should be done to highlight the implications of delays in agreeing a salvage contract. Eight-seven percent (87%) felt that there was too much ‘misinformation’ or ‘myths’ circulating across industry and that this could contribute to delays.

3.13.4 It is clearly evident that many organisations including shipowners, H&M and P&I insurers, LSAB, ISU/salvage companies, global law firms, nautical establishments, universities, marine consultants, maritime authorities and all engage in providing some degree of internal and/or external education and training. Many of us have attended talks/seminars as a speaker/presenter or as a delegate to listen to other industry experts or may have planned/participated in exercises.

3.13.5 What has become apparent from this review is the fact that perhaps the correct individuals are not always targeted, or provided with factual and ‘unbiased’ information, that may assist them in making key decisions and minimise delays.

3.13.6 When asked, which stakeholder groups, if any, might benefit most from additional education or coaching, the response was as follows:

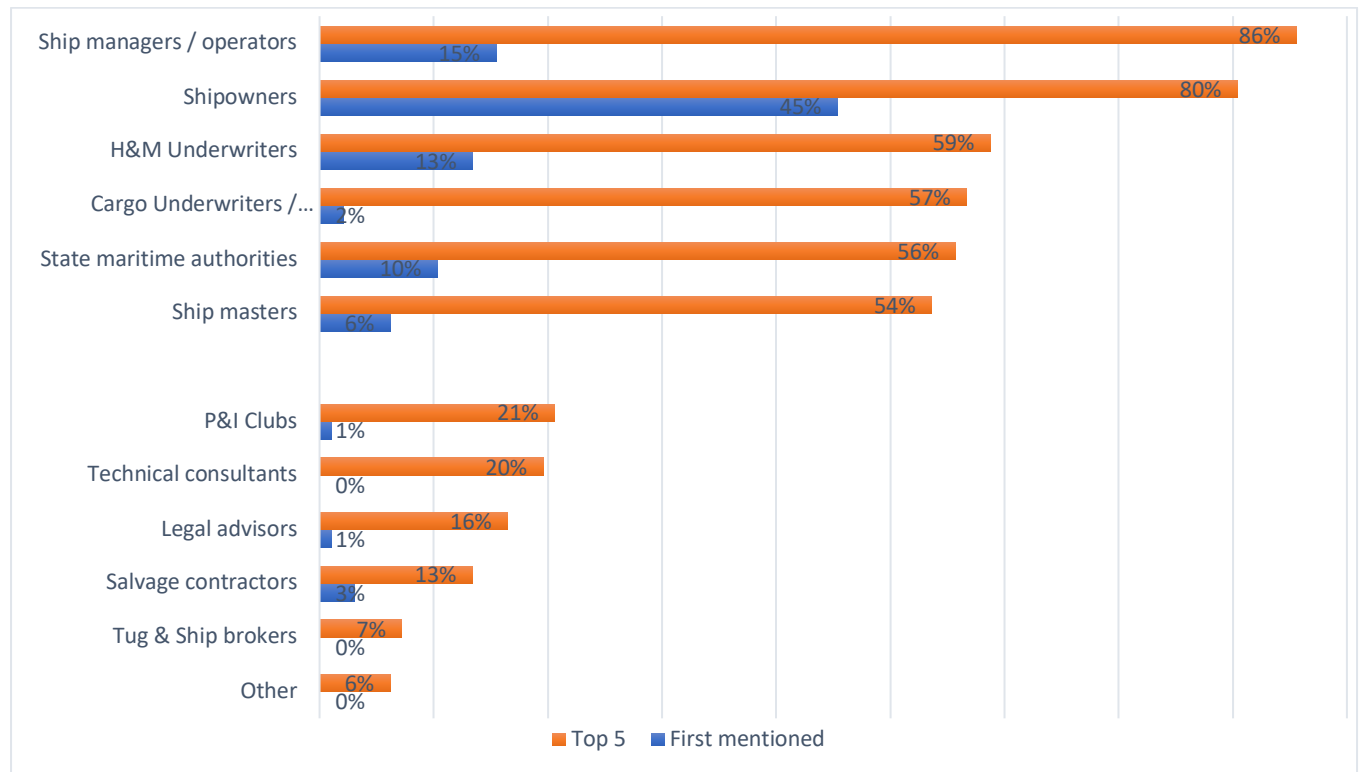


Figure 16. Additional salvage contract related training. (Base=105)

3.13.7 Although there was a clear split between the top and bottom six, it was evident that there was a need for some further education and/or training across all stakeholder groups.

3.13.8 When asked who should deliver future education and training, the stakeholders highlighted many of parties, such as the IG/P&I Clubs, IUMI/H&M underwriters, ISU/salvage companies, LSAB, marine consultants, SOSREP and law firms/arbitrators who are already proactive in this area.

3.13.9 Some have already offered to support this review by assisting with education/training initiatives, and there is no shortage of experts offering their services.

3.13.10 However, it was also pleasing to receive feedback that there may be opportunities for other organisations/institutions and groups to get involved and these included shipowners, LSG, ASG, nautical establishments/universities, BIMCO, Nautical Institute, ICS, IMO and cargo insurance brokers/associations.

3.13.11 I feel that if we are to maximise the experience and expertise that we have available, then there needs to be a co-ordinated response in agreeing who the recipients should be, what information needs to be exchanged and, by what means.



3.13.12 It has been proposed that an Education Steering Group/Committee be established, ideally with an independent non-partisan chair and with cross-industry representatives, to identify the future training needs and to agree a methodology for going forward.

3.13.13 Some have suggested that LSAB chair such a group. However, I personally consider the scope of the work to be much wider than the education that Lloyd's may be considering in their promotion of LOF, although both Groups should complement one another.

### 3.14 Cross-Industry Code of Practice / Guidelines

3.14.1 There are several extant agreements between some parties across industry. The Code of Practice between the International Salvage Union and the International Group of P&I Clubs (IG) relates to Article 14 of the 1989 Salvage Convention and the Code of Practice between the IG and the London Property Underwriters regarding the Payment of the Fees and Expenses of the SCR under SCOPIC.

3.14.2 Whilst there may be others that I have not sighted, or been made aware of, with the exception of the IG Large Casualty MoU I am not aware of any existing cross-industry codes of practice or agreements that aim to promote co-operation and collaboration between **all** the parties to facilitate an expeditious and effective response to maritime casualties.

3.14.3 Efforts appear to have been made to address the financial provisions for an incident to the detriment of building better relationships between the key stakeholders.

3.14.4 The absence of a 'code of practice' or 'industry guidelines' does little to promote opportunities for improved communications, joint participation in education, the sharing of lessons learned, training exercises, or other initiatives.

3.14.5 Ninety-five percent (95%) of stakeholders felt that there was a definite need for more collaboration between all the parties involved in a maritime casualty.

3.14.6 It is my opinion that there is considerable room for improvement in this area and that there is every need for greater understanding, mutual trust and 'accountability' between all the parties.

3.14.7 In January 2017, and following the aftermath of the MSC Flaminia incident, European Member States supported by industry stakeholders agreed EU-wide Operational Guidelines on places of refuge for ships in need of assistance. The International Group, the International Chamber of Shipping, International Union of Marine Insurers and International Salvage Union all played a significant role in the development of the Guidelines.

- 3.14.8 The EU Guidelines, although non-mandatory in nature, were intended to provide a uniform, and more robust approach, leading to well advised and, where possible quicker decision making. They also aimed at contributing to promoting positive attitudes – within Governments, authorities, and Industry in the interests of the protection of life, maritime safety and the environment. A key element for these key purposes is timely and clear communication between the parties involved.
- 3.14.9 Five years later and I find myself yet again addressing similar issues, albeit in a slightly different context where we are looking at the provision of salvage services as opposed to places of refuge.
- 3.14.10 However, many of the elements that were considered then are common to what is being sought through this report, namely: the need for stakeholders to fully understand their roles and responsibilities, the need to understand the risks in decision making and the potential impact of delays, the importance of collaboration with a number of different stakeholders – each with their own agenda and interests, quicker decision making and timely and clear communication between the parties involved.
- 3.14.11 Whilst not wishing to pre-empt the acceptance of any of the recommendations in this report, it is my opinion that it is now time for shipowners and other industry stakeholders, with the support of Governments/authorities, to demonstrate their continued commitment towards the protection of life and the environment by working together to develop, and implement, a Cross-Industry Code of Practice/Guidelines that will promote greater collaboration in the ‘procurement and provision of salvage services’ and also recognise the need for a sustainable salvage industry in the future.
- 3.14.12 Such a document could also promote best practice and serve as an invaluable reference document for all stakeholders, but in particular for new entrants into the industry.

### **3.15 Communications**

- 3.15.1 Effective co-operation between all those involved in casualty response operations is essential for success. At the onset of an incident the list of parties who will have a key role is diverse and will include the shipowner or manager/operator, H&M underwriters, brokers, P&I insurers, Cargo Insurers, legal advisors, etc. and all will generally have their own agenda and desired outcome. This is before salvors, consultants and other players become involved.
- 3.15.2 A shipowner is unlikely to have had a large number of casualties, if at all, and therefore, is relying on the experience of those advising him/her. Unfortunately, if the owner is served by H&M and P&I cover from different organisations, then such advice can be conflicting and may cause further delays as attempts are made to seek clarity from additional parties such as technical consultants or legal advisors.



- 
- 3.15.3 Whilst I am in no doubt that there are many best practices across the industry, I do not consider the current communications, or collaboration, between parties to be its greatest strength.
- 3.15.4 Throughout the review I have continually read evidence that has referred to a lack of transparency, lack of trust, the need for more openness, a reluctance to engage, a lack of synergy with parties looking after their own interests and there has been little evidence of stakeholders working together with a common goal of reducing, or minimising the risk to life, the vessel, its cargo and the environment.
- 3.15.5 From the review, many stakeholders also felt that communications and collaboration could, and should, be greatly improved thus ensuring that each of the parties is kept abreast of developments and can openly express their views throughout the duration of the incident, not only when they have the lead for a particular phase.
- 3.15.6 Cargo interests were singled out as potentially being left in the dark more than many of the other parties.
- 3.15.7 The importance of collaboration and the timely provision / exchange of accurate information on the ship and its cargo in a salvage is essential.
- 3.15.8 I accept that in the initial stages of an incident there may be some uncertainty as to who the key players are. This may take some time but could be easily resolved for many of the incidents, with the collation of key information prior to an accident occurring. For example, by a shipowner sharing the vessels' H&M and P&I underwriters' details with each of the parties.
- 3.15.9 I also accept that each of the stakeholders will have their own interests to consider. However, even when another party has the 'lead or primacy', there are added benefits in sharing experiences and this should lead to improved decision making, less delays and may result in financial benefits for all, if that is the goal.
- 3.15.10 Perhaps the pursuit of finding the cause of a casualty overriding the dangers and risks posed by the casualty and the consideration of liabilities might be explanations for lack of dialogue in salvage situations. Whichever the case, in an emergency, safety of life, ship and cargo safety and the protection of the environment are paramount, and all parties should have a key interest in preserving these factors".

## 4 Recommendations

### 4.1 Introduction

4.1.1 The Review has considered the impact of delays in the provision of salvage services and has engaged with stakeholders globally to understand the issues. The resulting analysis has prompted the following recommendations to be made.

4.1.2 In this summary of recommendations, I refer the reader to the relevant paragraphs where the full arguments and conclusions which have led to the recommendation can be found.

#### 4.1.3 Short-term horizon

4.1.4 It is abundantly clear that too much emphasis is placed on the cost and choice of a salvage contract, particularly during the early and critical stage of a casualty, with a view to parties extracting the best possible terms to their advantage and, it appears on occasions, with little regard or consideration for the casualty itself. Crew, ship and cargo safety and the protection of the marine environment should not be subordinate to commercial considerations.

4.1.5 Whilst shipowners, and their insurance underwriters continue to seek to reduce their financial exposure when dealing with a casualty, it is imperative that they fully understand the implications of their choice of contract, understand the benefits and/or limitations, and more importantly understand their liabilities, if the salvage services that they have procured do not meet the needs of the casualty within the timescale available.

4.1.6 As some shipowners and insurance underwriters seek to reduce their exposure, they need to fully understand the consequences, and risks, of a declining salvage industry and the potential impacts on preparedness, and state of readiness' of salvage services and equipment in the future.

4.1.7 Without a competitive salvage industry shipowners may have to arrange salvage services in their own name, fund their own salvage services or take the risk that accidents will not occur. For some shipowners, the risks that they present may be uninsurable.

### 4.2 Role of the Master or Designated Person Ashore (DPA)

4.2.1 Although the Master is on scene, has the best knowledge of his/her ship and the developing situation, and remains in command, the number of masters that sign or agree salvage services, has reduced significantly over the years. A master can be in





24/7 contact with his/her office and although this has its benefits, it can place the master under significant ‘additional’ pressure. “Influenced” by their superiors, insurers or legal advisors not to enter into a contract, it is often the DPA, or another nominated person, who will make, or approve, the choice of contract.

4.2.2 If not the Master, I believe that there needs to be greater clarity within a company regarding “who” is contracting the salvage services and will be held accountable for such a decision. Sadly, it is often the Master, officers and crew that may face criminalisation if the response to the incident is deemed to be inappropriate.

#### 4.2.3 Recommendation 1 (3.6 to 3.7.4)

4.2.4 It is recommended that the International Chamber of Shipping (ICS), supported by H&M and P&I underwriters, should remind their Members of the need to ensure that, in compliance with The International Safety Management Code (ISM) their Masters’, Designated Person Ashore (DPA), or other nominated person, as named in the Safety Management System (SMS), have the appropriate knowledge and experience in respect to the procurement and provision of salvage services as part of emergency response, and are given the authority to act promptly and decisively with due consideration to the risk to safety, the vessel, cargo and the environment.

#### 4.2.5 Recommendation 2 (3.7.1)

4.2.6 In the longer-term the ICS may wish to consider submitting a paper to the International Maritime Organisation’s Marine Safety Committee (MSC) requesting that any future amendments to Circular 6 (Guidance on the Qualifications, Training and Experience Necessary for Undertaking The Role of The Designated Person) include reference to the provision of salvage services.

### 4.3 Lloyd’s Salvage Arbitration Branch / Lloyd’s Open Form

4.3.1 Although the LSAB, and LOF itself, may have received a ‘temporary stay of execution’, if they are to increase the usage of the form then it is imperative that they note, and act on the comments received from stakeholders participating in this review. There is also a clear educational need for the SAB to ensure that the benefits of the LOF are fully understood by all parties.

4.3.2 Need for greater financial certainty over costs

4.3.3 Evidence from the survey has left me in little doubt that, in a corporate world where financial risk is very important, many of the parties, including some shipowners and their insurers, seek to have greater predictability or certainty over costs and this has resulted in an increased use of side letters or side agreements. Such arrangements seek to cap awards and close the financial gap between commercial contracts and the LOF.



4.3.4 Whilst few stakeholders will argue against the use of an LOF contract for a major incident, there is concern that its use for a low-medium value case risks is too expensive, has too much financial uncertainty and unacceptable timescales for settling costs.

4.3.5 If parties are looking for greater financial certainty, but also wish to have many of the benefits of the LOF itself, then perhaps there is a need for the SAB to see if there is scope to accommodate change that would be a compromise and acceptable to more parties. This should remove the need for many side letters or agreements and may make LOF a more popular contract of choice. Ideally, simpler cases could be settled under the current LOF system closer to a more commercial basis, with some element of incentivisation/encouragement still being applied to attract contractors/salvors.

#### **4.3.6 Recommendation 3** (3.9.17-3.9.19 & 3.10.3)

4.3.7 It is therefore recommended that the SAB address the disparity between costs for a case where an incident is dealt with (a) by means of a BIMCO commercial contract, (b) an LOF with a side letter capping Article 13 award; and (c) a standard LOF contract to provide the benefits of LOF but at a more competitive cost.

#### **4.3.8 Publication of settlements / awards**

4.3.9 Many stakeholders felt that the publishing of all awards and/or settlements might help to encourage use of the form in the future. There was however also strong opposition to this with some saying that the publication of settlements may mean that fewer are settled and could result in going to arbitration where costs would be even higher.

4.3.10. I am convinced that there needs to be more openness and transparency if the LOF is to have a long-term future.

#### **4.3.11 Recommendation 4** (3.9.10 – 3.9.11)

4.3.12 It is recommended that Lloyd's SAB make every effort to see if there are grounds for a compromise on this important matter so that either actual settlements/awards are published, settlement 'ranges' or realistic 'example / case studies.

4.3.13 A digital equivalent to the former Lloyd's Open Form Digest should be considered and widened to include settlements.

#### **4.3.14 Transparency, openness and safeguards**

4.3.15 LOF can be more costly, but it is the only contract that recognises the need to invest in the future of the salvage industry. In addition, some stakeholders consider that there is still the potential for abuse / misuse of the LOF. This does little to attract greater use of the form.

4.3.16 Whilst aiming to adapt to changes within the market, Lloyd's SAB - as custodians of the world's oldest and most recognised salvage contract, need to recognise that updating editions of the form will no longer be sufficient if they are to retain current, or attract new users.

4.3.17 There is a need to go back to basics, engage with industry and provide evidence that there will be more transparency, openness and safeguards in place to provide a quality, trustworthy and competitive product for the future.

#### 4.3.18 Recommendation 5 (3.11.11-3.11.12)

4.3.19 Having considered Recommendations 3 & 4, Lloyd's SAB should consider remarketing the LOF product to clearly demonstrate that they have addressed industry's concerns and have a criteria that provides for a 'fair award for the services rendered' through a process with enhanced transparency that will be universally acceptable. Any initiative will also need to clearly demonstrate that there are necessary safeguards in place to prevent any abuse or misuse.

#### 4.4 Liaison with Maritime Authorities

4.4.1 If there are protracted negotiations between owners, underwriters and prospective salvors as to the type of contract upon which the salvage services are to be rendered, then time will be wasted at a stage where saving time is of vital importance. There is a need for Masters, shipowners and/or their insurers to clearly outline their future plans/intentions/requirements in a timely manner and this will enable coastal States to offer support and specify any concerns or requirements.

#### 4.4.2 Recommendation 6 (3.12 – 3.12.12)

4.4.3 It is imperative that all parties recognise the benefits of entering into dialogue with the Maritime Authorities as soon as practicable. Any failure to liaise may lead to delays or may risk the potential of being 'directed' to take specific action that may be more costly.

#### 4.5 International Group of P&I Clubs Outreach Programme

4.5.1 The aim of the MoU, although not a legally binding document, is to promote and streamline co-operation between the Group Clubs<sup>23</sup> and maritime authorities to facilitate expeditious and effective response to major maritime casualties. The MoU is

---

<sup>23</sup> Between IG and the maritime administration signing the agreement



designed to promote a collaborative framework for the prompt and efficient handling of marine casualties.

#### **4.5.2 Recommendation 7** (3.12.13 – 3.12.14)

4.5.3 Maritime Authorities, not already participating in the Outreach Programme, are encouraged to contact the IGP&I<sup>24</sup> for further information<sup>25</sup> regarding the benefits of the scheme.

#### **4.6 Identification of H&M Underwriters**

4.6.1 It can be problematic for some parties to establish the identification of a vessel's H&M underwriter in the initial phase of an incident, in particular when communications with a vessel are difficult or severely limited.

#### **4.6.2 Recommendation 8.** (3.12.15 – 3.12.18)

4.6.3 The International Union of Marine Insurance (IUMI), as an influential and trusted voice in the global marine insurance market, are asked to consider utilising their worldwide communication network to exchange views and ideas with their members to see if there is any scope to improve existing arrangements that will facilitate earlier dialogue between parties in a maritime casualty.

#### **4.7 Education Steering Group / Committee**

4.7.1 It is clear that many organisations including shipowners, H&M and P&I insurers, LSAB, ISU/salvage companies, global law firms, nautical establishments, universities, marine consultants, maritime authorities engage in providing some degree of internal and/or external education and training.

4.7.2 However, what has become apparent from this review is the fact that perhaps the correct individuals are not always targeted, or provided with factual and 'unbiased' information, that may assist them in making key decisions and minimise delays.

#### **4.7.3 Recommendation 9** (3.13 to 3.13.13)

4.7.4 It is recommended that an Education Steering Group/Committee on Salvage Contracts, Services & Operations be established, with cross-industry representatives and with an independent (non-partisan chair).

---

<sup>24</sup> [www.igpandi.org](http://www.igpandi.org)

<sup>25</sup> Other programmes may be available through IUMI or other organisations



4.7.5 The remit of the “Group” should be to identify education and training needs/gaps, identify existing best practice and develop and implement an education and training strategy to meet future needs. The outcome should be in collaboration with industry experts, nautical establishments and universities and should aim to complement, **not replace**, the existing excellent education/training initiatives already being delivered by some of the organisations above.

#### 4.8 Cross-Industry Code of Practice

4.8.1 There are already a number of extant agreements between ‘some parties’ across industry.

4.8.2 However, the documents that I have sighted do little to promote opportunities for improved communications, joint participation in education, the sharing of lessons learned, training exercises, or other initiatives.

4.8.3 In fact, I get the impression that primacy has been given to ensuring that the provision of financial arrangements is in place at the expense, and detriment, of building better relationships between the key stakeholders.

4.8.4 I believe that there is considerable room for improvement in this area and that there is every need for greater understanding, mutual trust, communications and collaboration between all the parties.

4.8.5 Although a CoP will not be a legally binding document there is also a need for greater ‘accountability’ from, and between each of the parties.

4.8.6 Whilst it is recognised that there are various forums, seminars and conferences where salvage topics feature and also specific working groups from P&I Clubs, H&M underwriters and the ISU, there appears to be a reluctance for key parties to have a serious dialogue about salvage and the problems experienced with contracting and delays.

4.8.7 Whilst confidentiality must be respected and legal implications borne in mind, learning from ‘live’ situations is an excellent way in which to seek improvement and prevention going forward.

4.8.8 Such a document would also promote best practice and serve as an invaluable reference document for all stakeholders, but in particular for new entrants into the industry.

4.8.9 In essence, the lack of agreed practices and procedures does little to mitigate against the likelihood of delays – in fact it may even contribute towards delays!



#### 4.8.10 Recommendation 10 (3.14 – 3.14.12)

- 4.8.11 It is recommended that the IGP&I, IUMI, ISU and ICS consider establishing a working group with other co-opted stakeholders as required, to develop, and implement, a Cross-Industry Code of Practice/Guidelines that will promote improved communications, greater collaboration and standard procedures for the ‘procurement and provision of salvage services’, and also recognise the need for a sustainable salvage industry in the future.
- 4.8.12 As a minimum, the document should include the roles & responsibilities of key players and other parties in relation to the provision of salvage services, provision for incident debriefs, dissemination of lessons learned and best practices, and arrangements for planning and execution of cross-industry exercises and/or workshops.

## 5 Conclusions

### 5.1 Findings

- 5.1.1 During the course of this Review I have been extremely impressed by the initiatives being taken by some organisations and individuals to improve the level of preparedness to deal with a marine casualty.
- 5.1.2 Regrettably, I have also been dismayed to see that not all parties share the same values. Some parties appear to measure the success of an incident not on the fact that there has been no loss of life, or damage to the environment, but on the basis that they have not exceeded their financial targets for the year.
- 5.1.3 In a corporate world where financial risk is very important, some parties, including shipowners and their underwriters/insurers, seek to have greater predictability or certainty over costs and, consequently, delays are more likely to be incurred as they endeavour to minimise their financial exposure.
- 5.1.4 Dealing with a maritime casualty can be extremely challenging and for some caught up in the response to it, they may never have experienced anything like it in their careers before.
- 5.1.5 Whilst the level of danger facing the ship, and its crew, may not be immediately clear, the success of the operation, or not, will not only depend upon the experience and professionalism of those responding but on the ability for them to work together ‘as a team’ and their willingness to collaborate fully with one another.



- 5.1.6 By its very nature, the response to a maritime incident is complicated and compartmentalised with a shipowner relying on their property underwriters and liability insurers to advise on the best course of action and, on occasions, this can be conflicting and can result in delays as others are brought in to give opinions.
- 5.1.7 Every party with a part to play in a response to a maritime casualty holds a piece of the puzzle and each will respond from their own perspective to meet their organisational goals. Such compartmentalisation often leads to conflicting goals and, depending upon their relationships, can slow decision making.
- 5.1.8 Although the shipowner has ‘ownership’ of the situation the compartmentalisation already in play, coupled with an implicit sense of hierarchy, often limits these organisations from seeing the big picture.
- 5.1.9 Throughout the review I have continually read evidence that has referred to a lack of transparency, lack of trust, the need for more openness, a reluctance to engage, a lack of synergy with parties looking after their own interests and there has been little evidence of stakeholders working together with a common goal of reducing, or minimising the risk to life, the vessel, its cargo and the environment.
- 5.1.10 It seems clear that some parties within the industry have lost, or no longer value, the ability to collaborate and work together. There also appears to be a lack of accountability. This is to the detriment of all and needs to be addressed urgently.
- 5.1.11 If delays are to be prevented, or minimised, then the Review has concluded that some fundamental steps need to be taken to exploit opportunities to improve preparedness, communications, collaboration and education/training.
- 5.1.12 There is a need for cross-industry code of practice/guidelines as recommended, which ought to provide for a better understanding of salvage practices and procedures and in particular salvage contracts. It should also act as a catalyst for improved “working together”.
- 5.1.13 There is also a need for better education about salvage within the industry and, as recommended, an Education Steering Group/Committee would be best to undertake this task. There are potential training gaps from the Master/DPA to the new entrant joining the insurance sector. Individuals will be given their own organisational training but there needs to be greater ‘cross-industry awareness’ across all sectors.
- 5.1.14 Whilst the current decline in the use of the Lloyd’s Open Form may have an impact on delays, it is certainly not the root cause.



5.1.15 However, if LOF was not available as an option in the future as an option, then it would most certainly have a significant impact on delays, and for major incidents where there is risk to life and/or to the environment.

5.1.16 The International Group of P&I Clubs, International Union of Marine Insurance, International Salvage Union, Lloyd's Salvage Arbitration Branch and the International Chamber of Shipping are encouraged to collaborate constructively with maritime authorities, and other key stakeholders, to address the issues identified by the Review to promote improved and effective communications and preparedness, which is essential for the success between all those involved in maritime casualty response operations.

5.1.17 Finally, the salvage industry is an absolute necessity and key first responder when marine casualties arise. The decline in LOF and the general decline of professional salvage contractors are a real concern. If there is to be a healthy salvage industry going forward, able to respond globally with experienced personnel and suitable resources, it is suggested that key parties to salvage operations need to work much closer together with the common objective of safety of life, preservation of ships and cargoes and the protection of the marine environment, in the knowledge that there is adequate incentive and encouragement to ensure that the salvors will still be available and provide the services that we all depend upon.

## 6 Acknowledgements

- 6.1 I would like to take this opportunity to thank the International Group of P&I Clubs for initiating this Review and I offer my thanks to the Project Board – Ben Harris, Andreas Ogrey and Steve Roberts who have provided invaluable support, but at the same time, allowed me to act with complete independence throughout the duration of the project.
- 6.2 I would also like to extend my gratitude to all stakeholders who have been extremely generous in giving up their time to support this Review.

---

## 7 References and Sources

Code of Practice between International Group of P&I Clubs and London Property Underwriters regarding the payment of the Fees and Expenses of the SCR under SCOPIC

Code of Practice between International Salvage Union and International Group of P&I Clubs

EU VTMS Places of Refuge - EU Operational Guidelines, 2015

IMO, International Convention on Salvage, 1989

IMO, The International Safety Management Code (ISM)

IMO, MSC-MEPC.7/Circ.6 Guidance on the Qualifications, Training and Experience Necessary for Undertaking The Role of The Designated Person

MAIB Accident Investigation Report 15/2020. *THEA II & SVITZER JOSEPHINE*



## 8 Disclaimer and Copyright

The views expressed in this report are the author's and do not necessarily reflect those of the International Group of P&I Clubs.