

VTMIS

Places of Refuge

EU Operational Guidelines

Version 4 - Final 31 January 2017

Preface

Following recent maritime incidents involving ships in distress in waters outside the jurisdiction of any one State, the Member States of the European Union, together with the European Commission and the European Maritime Safety Agency (EMSA), decided to review the framework for co-operation and co-ordination between States in such cases, to improve the existing arrangements.

As a matter of principle, each State involved in the response operation should examine their ability to provide a place of refuge.

These Operational Guidelines have been prepared in a spirit of enhanced co-operation and coordination among all parties involved, including Member States' Authorities and concerned Industry.

Background

All States Parties to the UN Convention on the Law of the Sea (UNCLOS) have an obligation to protect and preserve the marine environment. In order to comply with this obligation, States should draw up and implement a National Contingency Plan for response to any maritime incident.

According to the IMO Guidelines on Places of Refuge¹, when a ship has suffered an incident, “the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge as it is rarely possible to deal satisfactorily and effectively with a marine casualty in open sea conditions.” A place of refuge is a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment. It may include a port, a place of shelter near the coast, an inlet, a lee shore, a cove, a fjord or a bay or any part of the coast.

Because of the many variable factors involved (e.g. sea state, weather and condition of the vessel, required and available facilities), and the variety of risks involved when bringing a ship in need of assistance into a place of refuge a decision to grant access to a place of refuge can only be taken on a case-by-case basis.

Since 2009, under the terms of the VTMS Directive², EU Member States have been required to designate **“one or more competent authorities, which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance.”**³ In setting up a system of competent authorities for managing places of refuge requests, the Directive also crystallises some of the recommendations of the IMO Guidelines into obligations for the different parties involved in such incidents.

Building on this framework, the EU Operational Guidelines provide practical guidance for the competent authorities (CA) and the main parties involved in managing a request for a place of refuge from a ship in need of assistance⁴, including where an incident occurs on the high seas or outside of the jurisdiction of any one Member State.

The EU Operational Guidelines do not cover SAR operations. The provisions of the SAR Convention⁵ take priority over these Guidelines at all times.

The EU Operational Guidelines do not apply to any incidents on inland waterways.

The EU Operational Guidelines, although non-mandatory in nature, are intended to support the more uniform application of the underlying legal provisions in Directive 2002/59/EC and must not be understood to imply any new or replace any existing legal obligations.

¹ IMO Resolution A.949(23) GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE

² Directive 2002/59/EC on Community vessel traffic monitoring and information system, as amended.

³ Article 20 (1) of Directive 2002/59/EC, as amended by Directive 2009/17/EC.

⁴ As defined in Directive 2002/59/EC Article 3(v): “ship in need of assistance” means, without prejudice to the provisions of the SAR Convention concerning the rescue of persons, a ship in a situation that could give rise to its loss or an environmental or navigational hazard”.

⁵ International Convention on Maritime Search and Rescue, 1979

They are drafted with a real operational situation for a vessel in need of assistance in mind. They aim at a robust **operational** process leading to well advised and, where possible, quicker decision making. At the same time they should contribute to promoting positive attitudes – within Governments, authorities, and Industry for the purposes of Places of Refuge, in the interest of the protection of human life, maritime safety, security and the environment. A key element for these purposes is timely and clear communication between the parties involved, in particular for cross-border situations.

The Guidelines support the requirement for national plans for accommodation of ships in need of assistance to include '*procedures for international coordination and decision-making*' and the attainment of the objective for Member States and the Commission to cooperate in drawing up concerted plans to accommodate ships in need of assistance, as required by the VTMS Directive.

As a matter of principle, each State involved in the operation should examine their ability to provide a place of refuge. A place of refuge request cannot be refused for commercial or financial reasons, nor should commercial interests become the main driver for the handling of PoR requests, or the selection of a potential PoR. Unless deemed unsafe, there should be no rejection without inspection.

Context

Many times situations leading to a request for a place of refuge involve only one Member State and will be handled by the same State, under its jurisdiction. There may however be cases where a purely national situation may turn into a situation involving neighbouring Member States or Member States in the vicinity of the incident. These Operational Guidelines should complement national plans and apply to situations where it is likely that more than one State may become involved, or where the incident falls outside the jurisdiction of any Member State.

It is important to note that there are obligations on Member States under the VTMS Directive, to monitor any potential situation, and an obligation on Masters to report any such incidents, before they turn into a place of refuge situation.

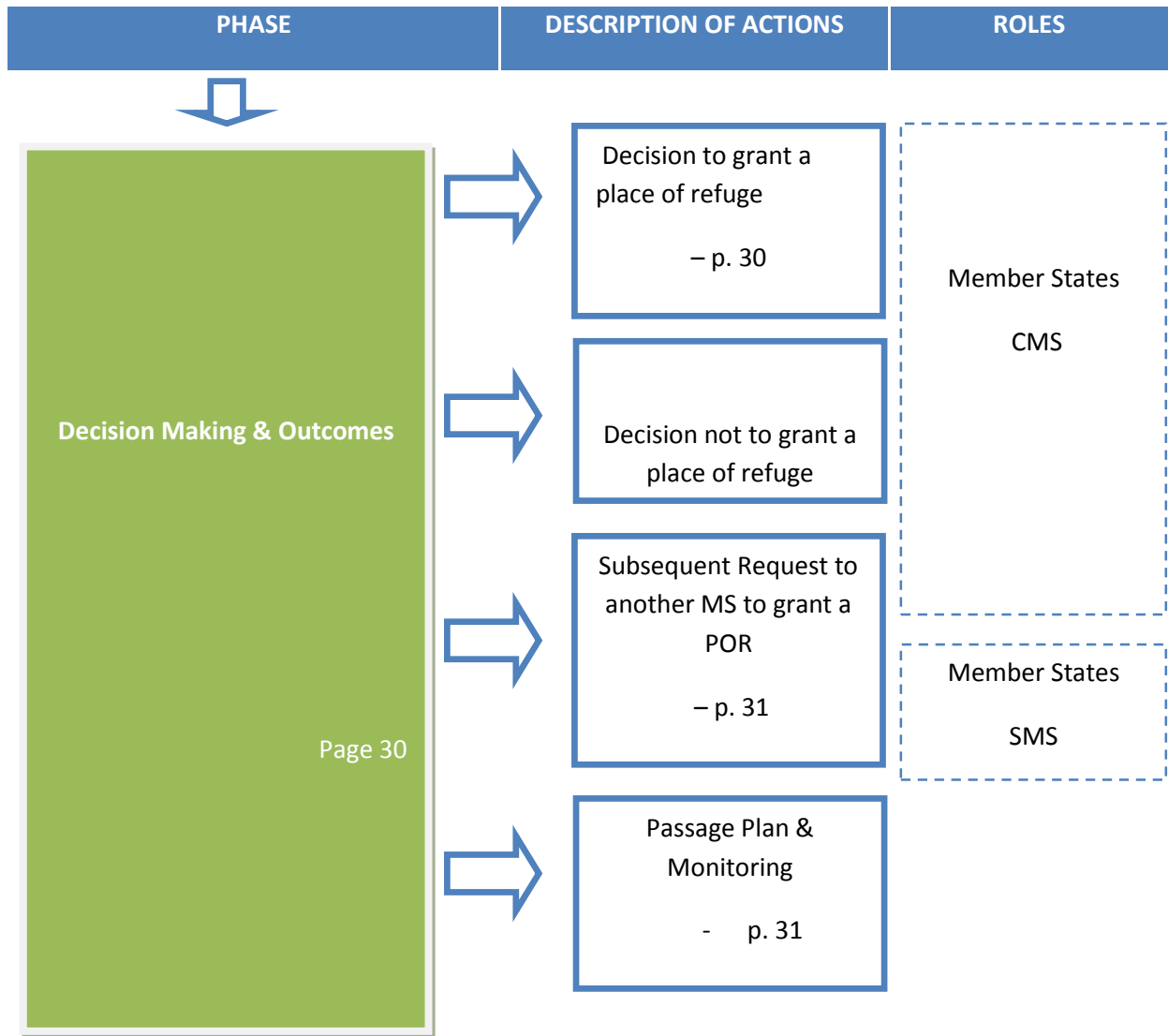
Flowchart and sequence:

**POR GUIDELINES – FLOW CHART
(QUICK REFERENCE)**

OPERATIONS

PHASE	DESCRIPTION OF ACTIONS	ROLES
<p>Initial Incident Reporting, Monitoring & Information gathering</p> <p>Page 17</p>	Initial Incident	<p>Member States</p> <p>CMS</p> <p>SMS</p>
	Monitoring the situation - p.18	
	Information Gathering – p. 20	
<p>Places of Refuge Co-ordination</p> <p>Page 24</p>	Incidents within jurisdiction of a	<p>Member States</p> <p>CMS</p> <p>SMS</p> <p>MRCC, MAS</p>
	Following SAR operation	
	No initial SAR operation	
	Incidents outside jurisdiction of any one Member State – p 25	
	Obligations on Coordinating Authority and Neighbouring Member States - p. 25	
	Transfer of co-ordination - p. 25	

PHASE	DESCRIPTION OF ACTIONS	ROLES
<p style="text-align: center;">Requesting a Place of Refuge</p> <p style="text-align: right;">Page 26</p>	<p>Appraisal of the situation – p.26</p>	<p>Member States</p> <p>CMS</p> <p>SMS</p> <p>MRCC, MAS</p> <p>Port authorities</p>
	<p>Identification of Hazards and Assessment of Associated Risks – p.26</p>	
	<p>Identification of Assistance / Services Required in place of refuge - p.26</p>	
	<p>.Transmission of request to the Member State and cooperation – p.26</p>	<p>Ship owner / Operator / Company Designated Person Ashore (DPA)/contracted salvor, Person in charge</p>
	<p>Formal Request for a Place of Refuge - p.27</p>	<p>Member States involved in handling a formal PoR request.</p>
<p style="text-align: center;">Risk Assessment & Inspection</p>	<p>EU Decision Methodology</p>	
	<p>Inspection / Expert Analysis - p. 29</p>	



INDEX

Please click [HERE](#) for index of the document – page 67

DEFINITIONS

Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge	Responsibilities of Member States	Responsibilities of the Co-ordinating Member State (CMS) Responsibilities of the Supporting Member States (SMS) Role of Maritime Assistance Service and Maritime Rescue Co-ordination Centre The Flag State
	Responsibilities of other involved parties	The master Persons responsible for the vessel at the time of the incident The Classification Society The Salvor Port & Harbour Authorities Insurers

ADDITIONAL INFORMATION

Topic	Details	Scope
Financial Security	Operational action points	Procedures in the national plans, information gathering aspects, decision making
Media and Information Handling	Key Principles Key interest groups Key actions for persons handling incident	Media handling procedure

Lessons Learned	National & Regional De-briefs Places of Refuge CA Co-operation Exercises & Workshops	Best practices promotion

APPENDIXES

Appendix	Title	Scope
<u>A</u>	List of MAS / MRCC	Operations
<u>B</u>	List of Competent Authorities	Operations
<u>C</u>	Formal Place of Refuge Request Form	Operations
<u>D</u>	Decision Making Tool	Operations
<u>E</u>	Integrated Maritime Services	Tools Available at EU level
<u>F</u>	Member State Handover Co-ordination Form	Operations
<u>G</u>	SITREP Template	Operations
<u>H</u>	International and European Law – relevant rules	Information
<u>J</u>	List of Websites/Contacts	Information
<u>J</u>	Financial Liability and Compensation	Information

OTHERS

<u>List of Definitions</u>
<u>List of Acronyms</u>

Chapter 1

Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge

1.1. Responsibilities of Member States

Each Member State shall:

- designate one or more competent authorities which have the required expertise and the power, at the time of the operation, to take independent decisions on their own initiative concerning the accommodation of ships in need of assistance;
- establish assessment procedures for acceptance or refusal of a ship in need of assistance in a place of refuge, in their plans for the accommodation of ships in need of assistance. Plans must also include procedures for international coordination and decision-making, which should be consistent with these Guidelines for the handling of requests for assistance and authorising, where appropriate, the use of a suitable place of refuge;
- examine their ability to provide a place of refuge;
- ensure due publicity for the name and up-to-date contact details of the competent authorities;
- ensure availability of information on plans for other neighbouring States and all parties involved in a response operation;

1.1.1. Member State's Competent Authority

Responsible for:

- Taking independent decisions on the need for, and location of, a place of refuge for a particular ship in need of assistance
- Overall command and control of incident, taking steps leading up to accommodation in a place of refuge, including the ones listed in Annex IV of the Directive e.g. may direct a vessel in need of assistance to place(s) of refuge when judged appropriate
- Liaising with authorities likely to get involved and ensure that information on any potential hazard arising from the incident to other State(s) is made available to the other State(s) as soon as possible.

Direct access to the by the Member States designated competent authorities is via:

<http://www.emsa.europa.eu/implementation-tasks/places-of-refuge/download/3941/2630/23.html>

---- [Click to come back to PoR Quick Reference](#) ----

1.1.2. Co-ordinating and Supporting Member States

The Maritime Assistance Service (MAS) or the authority (or authorities) as referred to in Articles 20.1 and 20a.2(a) of Directive 2002/59/EC, as amended, which has assumed co-ordination, will be known as the Co-ordinating Member State (**CMS**). Other Member States supporting the CMS will be known, for the purpose of these Guidelines, as Supporting Member States (**SMS**).

1.1.3. Responsibilities of the Co-ordinating Member State (CMS)

The CMS will be responsible for:

- Ensuring that the competent authority (CA) is in charge of overall co-ordination of the incident;
- Initiating their national PoR procedure, in order to identify a potential site on their territory;
- Being the main point of contact for liaison with representatives of the involved parties, including the ship owner and/or operator, master, P&I club, salvors, and if necessary, the operator of a port of refuge;
- Where necessary, coordinating the response to the PoR request with potential Supporting Member States (SMS), in order to gain their assistance;
- Issuing SITREPS and alerting SMS and EMSA Maritime Services of the incident, actions taken to date and proposed plans;
- Determining whether a Member State Co-operation Group and a Secretariat should be set up for the incident;
- Organising evaluation teams: search for transportation, constitution of teams, in collaboration with the other states involved;
 - Undertaking a thorough analysis of the factors listed in these Guidelines in order to decide whether to allow a ship in need of assistance to proceed to a place of refuge (see Chapter 5); and
 - Communicating the results of that analysis, once complete, to the other authorities concerned and to the shipowner.
- Ensuring that those authorities who may become responsible for the vessel once in a place of refuge are:
 - informed as early as possible of that possibility;
 - involved in the risk assessment process and are given all relevant information.
- Following a balanced assessment of all the factors involved, providing a place of refuge whenever reasonably possible; OR

Where appropriate, initiating a dialogue to formalise the transfer of co-ordination to another State.

NB: The CMS considering a formal PoR request should not enter into direct contact with different port authorities or shore based authorities in another State. All information exchanges must go through the competent maritime authorities in the State concerned.

---- Click to come back to PoR Quick Reference ----

1.1.4. Responsibilities of the Supporting Member States (SMS)

The Member States supporting the CMS in handling the PoR request procedures include:

- those nearest the vicinity of the vessel in need of assistance;
- and, if necessary,
- the Flag State;

Each SMS should:

- Ensure that any relevant incident related information is passed to the CMS without delay;
- Be prepared to examine any requests from the CMS for assistance (logistical, expertise or evaluation);
- Be prepared to examine a request for a place of refuge within their jurisdiction by the CMS or the salvor as mandated by the owner;

In particular,

- Neighbouring Member States should examine the possibility of granting a place of refuge in their territory – even though the incident, at the time, is taking place outside their area of jurisdiction.

1.1.5. Role of Maritime Assistance Service and Maritime Rescue Co-ordination Centre

In some EU Member States, the Maritime Assistance Service (MAS) and the Maritime Rescue Co-ordination Centre (MRCC) can be one and the same, or have been co-located and are available 24/7 to act as a single point of contact (SPOC) for refuge requests. **A list of MAS/MRCCs in EU Member States can be found [\[link to Appendix A\]](#).**

In the event of any maritime incident⁶, the ship's master and/or the salvor shall contact the appropriate MRCC/MAS, as designated in each EU Member State, to report the incident and initiate the necessary follow-up actions.

In emergency situations other than those defined in the SAR Convention, the Maritime Assistance Service (MAS):

- provides communication facilities for ships in need of assistance.

⁶ c.f. Article 17 in Directive 2002/59/EC as amended

In emergency situations as defined in the SAR Convention, including one that subsequently arises from efforts to assist a ship in need of assistance:

- the national or regional Maritime Rescue Co-ordination Centre (MRCC) is responsible for communication and the management of the search and rescue operation;
- the Maritime Assistance Service (MAS) should monitor developments, in case a need for a place of refuge arises, or if other measures (such as counter pollution activities) are required.

Once the SAR functions are completed, communication and incident management normally transfers to the MAS.

---- Click to come back to PoR Quick Reference ----

1.2. Responsibilities of other involved parties

1.2.1. The master

The master has the command of the vessel and remains in command of the vessel even when a salvage operation is underway, until such time that the master has relinquished his command and it comes under the responsibility of the salvor.

The master shall:

- inform the competent authorities (of the nearest coastal State(s)) of the incident as soon as possible issuing an incident report with at least the following details: (1) the ship's identity, (2) the ship's position, (3) the port of departure, (4) the port of destination, (5) Information about the on-board cargo, (6) the address from which additional information may be obtained on any oil and dangerous cargo on board (i.e. copy of cargo manifest) to the extent known, (7) quantity, location and type of bunkers on board, (8) the number of persons on board, and (9) details of the incident;
- inform the shipowner or the operator of the ship, in accordance with the ISM Code, of the incident;
- cooperate fully with the CAs;
- communicate all requested or pertinent information to CAs ; and

The master should (with the assistance of the company and/or the salvor where necessary):

- assess the situation and identify the reasons why the ship needs assistance;
- carry out an appraisal of the threats (e.g. from fire, explosion, grounding etc.); and then
- estimate the consequences of the potential casualty, if the ship were to:
 - remain in the same position;
 - continue on its voyage;
 - reach a place of refuge; or
 - be taken out to sea.

The master (and/or the salvor) should (See further Chapter 4 on Requesting a Place of Refuge):

- identify the assistance required from the coastal State in order to overcome the inherent danger of the situation;

- make contact with the coastal State (through the coastal State's MAS/MRCC – See [Appendix A](#)) in order to transmit:
 - the master's appraisal of the situation (to the best of the masters's ability or knowledge at the time of the situation)
 - the hazards and risks identified
 - the assistance required
 - the particulars required under the international conventions in force
 - if there is an emergency response services (ERS) onboard;
- undertake any relevant response actions to minimize the consequences of the casualty.

---- *Click to come back to PoR Quick Reference* ----

1.2.2. Persons responsible for the vessel at the time of the incident

- Ship operators, ship agents & charterers

For the purposes of these Guidelines, 'ship operator' is the owner or manager of a ship⁷, 'ship agent' is any person mandated or authorised to supply information on behalf of the operator⁸, and 'charterer' is the bareboat charterer of the ship.

The operator shall contact the CA and remain available for consultation and cooperation with the CA, as soon as it is informed of the incident.

The operator decides which external specialists, such as salvors, to contract to assist with the required response measures handling an incident.

It is important that ship charterers and/or agents contact the CMS at earliest opportunity to discuss the incident and provide relevant information.

Ship operators must cooperate fully with the CMS, in accordance with existing national and international law.

- Cargo Owners/shippers

For the purposes of the Guidelines, 'shipper' is any person by whom or in whose name or on whose behalf a contract of carriage of goods has been concluded with a carrier⁹.

Initial requests for information about on-board cargo should be directed to the master in the first instance, who should have information of cargo on board, including its location and ownership through documentation on board, notably the ship and cargo manifest and the bill of lading (in the case of tankers Material Safety Data Sheets –'MSDS' – will be used), and can, identify the bill of lading issuers, shippers and others who can be contacted for the purposes of identifying the cargo.

If the master has relinquished his command and/or is no longer in a position to provide the information, Cargo owners/ shippers have the most accurate information on cargo, which is particularly important in the case of dangerous goods.

⁷ Article 3(b) of Directive 2002/59/EC as amended, OJ L 208, 5.8.2002, p.10.

⁸ Article 3(c), *idem*.

⁹ Article 3(d), *idem*.

It is important to ensure that commercial interests do not become the main driver for the handling of PoR requests, or the selection of a potential PoR.

1.2.3. The Flag State

The Flag State should be asked to cooperate with the CMS, if there is a need for specific information on the ship's certificates and any other relevant documentation (i.e. safety and pollution prevention). There is an obligation on CMS to keep the Flag State aware of any developments. The Flag State can also act as SMS.

1.2.4. The Classification Society

Many classification societies have set up emergency response services (ERS) (ERS can provide information on damage stability and residual strength etc to the ship's crew, salvors or the CMS.). Whereby the ship classification society has available a shore-based ERS it should be forthwith notified to the CMS. If the vessel in question carries an Emergency Response-Service, the availability should be notified to the CMS by the operator as soon as possible.

Following an incident, it is imperative for the classification society to be involved in the information gathering and risk assessment stage, in particular when a formal request for a place of refuge has been made, and to provide any information. A clear line of communication should be established between ERS and CMS. As the International Association of Classification Societies recommends, ERSs are to provide rapid technical assistance to the Master and to other authorities.¹⁰

The CMS should have access to all information that he deems necessary, i.e. ERS modelling, cargo manifests, etc. From the early critical stages through to repair, ERS provides support by evaluating the technical aspects of the casualty and identifying concerns and possible courses of action.

1.2.5. The Salvor

The duties of the Salvor are set out in Article 8 of the International Convention on Salvage 1989, which is incorporated into Lloyd's Open Form¹¹, and will apply when no contract is in place. If a contract other than Lloyd's Open Form is in place responsibilities will be different and will be specific to each casualty.

After the master has relinquished his command, the salvor is responsible for:

- Keeping the co-ordinating authority/CA fully informed about the condition of the vessel and the progress of the salvage operation.
- Cooperating fully with the CA in ensuring the safety of the ship, of persons, and the protection of the marine environment, by taking all appropriate measures.¹²
- Submitting an outline salvage plan showing immediate intentions (detailed plan to be provided later) to the CA for approval before operations commence.
- (If there is an ERS in place), the salvors will be in direct contact with the classification society to provide them with updates on the condition of the vessel.

¹⁰ IACS Recommendation N.145 (May 2016)", see at

http://www.iacs.org.uk/document/public/Publications/Guidelines_and_recommendations/PDF/Rec.No.145.pdf2856.pdf

¹¹ The most commonly used contract is the Lloyd's Open Form which places onerous obligations on the salvor including a commitment to use 'best endeavours' and 'to prevent and minimise damage to the environment'.

¹² see Article 19(1) and Annex IV of VTMS Directive

The salvage team is led by the Salvage Master and will range in size depending on the incident. It may include Salvage Engineers, Naval Architects, Divers and Specialists, including Cargo Specialists.

1.2.6. Port & Harbour Authorities

Depending on circumstances and following the risk assessment a port or harbour may be identified as a potential PoR.

If a port or harbour is identified as a potential PoR for a vessel in need of assistance, the following issues will need to be considered:

- The availability of a suitable Berth, designated Emergency Reception Berth, or otherwise, place to accommodate the vessel.
- The risk to safety and/or human health, particularly if the port or harbour is in close proximity to populated areas.
- Technical considerations of the port's operations (e.g. assessment of the potential risk of lengthy disruption, the vessel blocking or restricting access through navigation channels, damage to infrastructure).
- If the CA responsible at sea changes to the Authority responsible in the port or harbour, the continuity of all operation towards the vessel seeking a place of refuge regarding the vessel / port interface should be maintained without any loss. (Vessel/port Interface regarding waste management, cargo handling, safety and security etc. diverts from service on intact vessels.)

1.2.7. Insurers

Protection & Indemnity ('P&I') Insurance covers a wide range of liabilities including personal injury to crew, passengers and others on board, cargo loss and damage, oil pollution, wreck removal and dock damage. Generally, P&I Clubs also provide a wide range of services to their members on claims, legal issues and loss prevention, and often play a leading role in the management of casualties. Hence, establishing communication with the P&I Club as early as possible during an incident is important as they can be instrumental in obtaining relevant information from the ship operator.

In an incident, they may be asked to provide financial guarantees which may include guarantees for damages or losses to ports during the accommodation of a ship in need of assistance. (See [Appendix J](#) for more details)

Hull & Machinery ('H&M') Insurance covers damage to the vessel's hull, machinery and equipment. This is often covered by two or more underwriters; hence, it is sufficient to obtain the contact details of the lead hull insurer, who is authorised to act on behalf of all followers. (See [Appendix J](#) for more details)

Cargo insurance covers damages to the cargo on board the vessel, including cargo contributions to the general average. (See [Appendix J](#) for more details)

---- [Click to come back to PoR Quick Reference](#) ----

Chapter 2

Initial Incident Reporting, Monitoring & Information gathering



2.1. Initial Incident Reporting

With a view to preventing or mitigating any significant threat to maritime safety, the safety of individuals or the environment, member States shall monitor and take all appropriate measures to ensure that the master of a ship sailing within their SRR/EEZ or equivalent, reports to the coastal station responsible for that geographical area.

Insofar as the vessel intends to call, or has called, in a European (EU) port, or has passed the Mandatory Reporting Systems (MRS) located in the waters of EU Member States; the relevant data on the vessel (e.g. persons on board, HAZMAT, ETA, ETD etc.) is available through the SafeSeaNet system (SSN) and allows their distribution to the relevant authorities along the planned route of the ship. Depending on the situation, there may already be some information available in the SSN that can be used, in accordance with incident reporting requirements and guidelines¹³. The CMS will gather any new or additional information deemed necessary for the safe handling of the PoR request and will bring anything relevant to the attention of any other involved parties, whether public or private.

If not already available, as soon as it is practicable, when the PoR request is received, the following information should be collected by the CMS and circulated to other states who are, or who may become involved (SMSs):

- ship's particulars: type, name, flag, IMO number
- vessel position
- Last and next port of call
- nature of the damage reported
- cargo on board
- total persons on board
- condition of the vessel at the end of the SAR operation (if appropriate).

¹³ The Incident Reporting Guidelines (link: <http://emsa.europa.eu/documents/technical-documentation.html>) describe how incidents covered should be reported and exchanged between Member States through the SafeSeaNet systems.

Situation Reports (SITREPS)¹⁴

The CMS should draft and share situation reports (SITREPs) within the SSN system using the format in [Appendix G](#) on a regular basis, and to all other involved parties including to the master/salvor, at least at the following stages of the operation:

- a) At the end of the initial information gathering phase, subsequent to the alert being given. These initial SITREPS should report on initial measures taken.
- b) Upon receipt of the report of an evaluation / inspection team.
- c) During the risk assessment process: successive SITREPs should be issued if new information about the vessel in need of assistance becomes available, or if any actions on the part of one Member State makes it necessary to formalise the information with all other parties involved.
- d) When a decision on whether or not to grant a place of refuge is made.
- e) Arrival of the damaged ship in the place of refuge

SITREPs allow the formalisation and recapitulation of data that should already be made available through other EU information systems e.g. SafeSeaNet.

---- Click to come back to PoR Quick Reference ----

2.2. Monitoring the situation

The EU has a number of operational information systems which gather, organise, integrate and exchange/share the data relative to vessels, its cargo and passengers with the purpose of facilitating the information sharing and cooperation between Member States.

The CMS should therefore consult SSN during the initial alert phase. The SMSs, if not already aware, once they have been made aware of the incident, should keep themselves updated via SSN.

During an operation, SSN can be used as follows:

2.2.1. Obtaining information relative to the vessel and cargo:

SSN provides updated information on the vessel identification, number of persons on board, voyage, incident reports, dangerous and polluting goods (Hazmat) carried on board if she has previously sent mandatory reports or if she has fulfilled her obligations prior to calling at an EU port.

2.2.2. SafeSeaNet, information system relative to the event:

¹⁴ The SITREP is the same as currently exchanged via SSN and the example provided in appendix 1 to the SSN IR Guidelines (Version 2.1, date: 07.07.2016) which includes a specific section related to the PoR specific information. Further guidance can be found in Annex G.

- Use of SafeSeaNet by the CMS:

The CMS uploads the following on SSN with automatic notification of all other parties involved (as attachments):

- The information on the vessel involved and their representatives.
- Information on their site(s) regarded as potentially suitable places of refuge.
- Operational SITREPs ([Appendix G](#), SITREP template including a section for PoR relevant information)
- Once the necessity of a place of refuge is ascertained or confirmed, the CMS defines a new list of addressees allowing for information sharing with the flag state (if EU), neighbouring Member States with whom operational agreements are in force, and neighbouring states liable to be involved in the process.

Note: the definition of an address list allows an automatic notification to the selected addressees. Every time new information is entered and distributed to the same address list, CMSs are kept informed of all new entries in SSN.

- Successive updates on SSN: each updated SITREP is available in SSN as an attachment (SSN shows only the latest attached document) and triggers an automatic notification to all CMSs selected. Those addressees need to open the attached document in order to read the SITREPs. In case these addresses are e-mail recipients, through this e-mail they will receive the necessary information to search for the SITREP details in the SSN central system.
- Validation, as SITREPs, of the information gathered by other member states. Validation means: confirmation and recognition of the information as pertinent to the situation and the operational parameters at hand.

2.2.3. Relative to dangerous, polluting and toxic goods

SSN provides the identification and details of the dangerous and polluting goods carried on board:

HAZMAT CARGO¹⁵ – Some of the data elements which have to be reported in accordance with the VTMIS Directive and FAL Form 7 may be obtained from:

¹⁵ According to Directive 2002/59/EC, as amended, Dangerous Goods means:

- goods classified in the IMDG Code,
 - dangerous liquid substances listed in Chapter 17 of the IBC Code,
 - liquefied gases listed in Chapter 19 of the IGC Code,
 - solids referred to in IMSBC Code Appendix 4 – materials with Group (B) or (A+B)
 - Also included are goods for the carriage of which appropriate preconditions have been laid down in accordance with paragraph 1.1.6 of the IBC Code or paragraph 1.1.6 of the IGC Code;
- while Polluting Goods means:
- oils as defined in Annex I to the MARPOL Convention,
 - noxious liquid substances as defined in Annex II to the MARPOL Convention, and
 - harmful substances as defined in Annex III to the MARPOL Convention.

- the SafeSeaNet (SSN) Central HAZMAT Database (CHD).

A public open access is available to industry representatives and the general public, but with limited functionalities. Such guest users may access the application through the EMSA MAP using the general credentials mentioned in bold for guest users in the following EMSA webpage on Reporting of HAZMAT in SafeSeaNet.

<http://www.emsa.europa.eu/related-projects/reporting-of-hazmat-in-safeseanet.html>

Additional information relative to some dangerous good can be found in:

- [MAR-ICE network](#)

MAR-ICE can provide upon request product specific information, trajectory forecasts of released chemicals and related risk assessments. The service is available 24/7 and can be accessed by maritime administrations through a **dedicated MAR-ICE Contact Point**. The MAR-ICE contact numbers and activation procedures have been distributed to the relevant national maritime administrations. Below the link to EMSA MAR-ICE network web page:

<http://emsa.europa.eu/chemical-spill-response/mar-ice-network.html>

- [MAR- CIS](#)

MAR-CIS (MARine Chemical Information Sheets): EMSA's datasheets of chemical substances (primarily liquids) frequently transported in European waters. They contain concise and relevant information on the behaviour and properties of chemicals including maritime specific information (e.g. IMDG code, IBC code, GESAMP, seawater solubility, case histories, etc.) for supporting emergency responders to plan response operations safely and to minimise the potential adverse impacts to the environment and to the public. **MAR-CIS is only accessible through SSN.**

2.2.4. Integrated Maritime Services

[\[See Appendix E\]](#)

---- Click to come back to PoR Quick Reference ----

2.3. Information Gathering

It is critically important for a master, operator, owner or salvor to provide the authorities with correct/accurate information, and in a timely manner, as this will assist the CA in making the correct decision for the benefit of all.

It is imperative that commercial interests do not prevent the competent authorities from having access to all relevant and accurate data.

The operator, the master of the ship and, as the case may be, the owner of the dangerous or potentially polluting goods carried on board, are under an obligation to cooperate fully with the competent authorities.

2.3.1. Information sources and accessibility

It is essential that the CA makes an assessment of the situation and associated risks, using the available relevant information. The information required may be available from a number of sources, including the master.

All information received should be checked against all available sources, e.g. SafeSeaNet, THETIS and any other local systems which are used by neighbouring ports or States, as well as P&I Clubs. Other information can also be sought e.g. CleanSeaNet, such as oil spill modelling data, information on the residual strength of the vessel, weather forecast, etc. It is recognised that some place of refuge events present time-critical scenarios where the ability to collect and fully analyse all available data and involve all parties has to be balanced against the speed of response required.

2.3.2. Contacts

Competent Authorities and Member States should maintain good contacts with the Industry to facilitate information gathering. A list of contacts can be found in [Appendix I](#) and should include:

- Classification Societies who can also provide information on the availability of ERS (to evaluate vessel's residual stability and damage calculations)
- Flag administrations
- Ship agents
- P & I Clubs
- ITOPF
- Salvage companies
- Maritime experts and surveyors
- Lead hull underwriter

Through the master, ship operator and/or salvor, or directly it is possible for the CA to access information provided by the ERS including information on:

- the residual strength of the vessel;
- outflow of oil and/or other substances (i.e. HNS) and water ingress;
- intact and damaged stability, including assessments at intermediate stages;
- floatability of the vessel;
- grounding forces, including the effects of tide.; and
- information on insurance coverage

2.3.3. Information on insurance coverage

Possible sources of information on the insurance cover for vessels in need of assistance include THETIS and EQUASIS. EQUASIS (<http://www.equasis.org/EquasisWeb/public/HomePage>) provides a very useful tool for competent authorities, because the database already includes, *inter alia*, information on whether a vessel has insurance or not and, if so, the identity of the insurer (if the insurer is a member of the International Group of P&I clubs). In addition, a ship's insurance cover arrangements can be verified by obtaining clarification directly from the operator and or the insurance provider. Details of the insurance arrangements for ships entered in one of the International Group of P&I Clubs can be checked immediately through the relevant Club's publicly available ship search facility or 24 hour emergency telephone number (<http://www.igpandi.org/Group+Clubs>).

Once cover arrangements for the ship concerned are verified, the CA will have access to the identified insurance provider who will respond under the relevant IMO convention/s or national legislation. International Group Clubs may also provide a Letter of Undertaking following consultation with the affected State.

2.3.4. Actions in case of absence of proof of insurance

If the vessel in need of assistance cannot present proof of valid insurance, the State considering a request to accommodate the ship in a place of refuge can still request insurance information, or proof of a bank guarantee, directly from the company/ shipowner¹⁶.

Pending the request for a proof of insurance or a financial guarantee, the CA shall, in accordance with existing EU law¹⁷, continue with the analysis of the PoR request and identify the best course of action for the protection of human life and the environment.

In practice, the search for proof of insurance must continue in parallel with the other steps in considering the PoR request.¹⁸

Lack of proof of adequate insurance cover¹⁹ cannot in and of itself form sufficient reason to refuse such a request.²⁰

---- Click to come back to PoR Quick Reference ----

¹⁶ The shipowner/company must place itself at the disposal of the CA throughout the incident, in accordance with Article 19 (3) of Directive 2002/59/EC as amended, and relevant provision of the ISM Code.

¹⁷ Article 20c (2) of Directive 2002/59/EC.

¹⁸ Article 20c (1) of Directive 2002/59/EC.

¹⁹ In accordance with Article 6 of Directive 2009/20/EC, OJ L 131, 28.5.2009, p. 128.

²⁰ Article 20c (1) of Directive 2002/59/EC.

Chapter 3

Places of Refuge Co-ordination

Many times situations leading to a request for a place of refuge involves only one Member State and will be handled by the same State, under their jurisdiction. There may however be situations progressing into a situation involving neighbouring Member States or Member States in the vicinity of the incident. These Operational Guidelines should complement national plans and apply to situations where it is likely that more than one State may become involved, or where it is outside of the jurisdiction of any one Member State. The principle is that each State involved starts to examine their ability to provide a place of refuge and that, in the interest of resolving the situation, there is direct contact between those CAs involved to decide who is best placed to take the coordinating role.

3.1. Incidents within jurisdiction of a Member State

3.1.1. Place of refuge request - following SAR operation

When a Place of Refuge (PoR) request immediately follows a SAR operation, the search and rescue region (SRR) in which the incident occurs should be the starting point for deciding who is responsible for the initial coordination of the PoR request. This is to ensure continuity of coordination throughout the handling of the incident.

As the case may be, the State whose MRCC has been coordinating the SAR phase should remain in charge of incident coordination, unless and until an agreement has been reached to transfer co-ordination to another coastal state.

If the initial position of the vessel making the PoR request is inside waters under the jurisdiction of the same Member State whose MRCC was co-ordinating the SAR operation, that Member State should retain co-ordination until the operation is completed and/or there is an operational requirement/agreement to handover to another Member State.

If the position of the vessel is outside waters under the jurisdiction of the Member State that was co-ordinating the SAR operation at the point a PoR request is made, then the Member State under whose jurisdiction the vessel now is shall take over co-ordination from presently co-ordinating Member and from then on be the CMS, unless otherwise agreed. Information gathering and transfer should be done as described in Chapter 3.

---- Click to come back to PoR Quick Reference ----

3.1.2. Place of refuge request - no initial SAR operation

If a PoR is requested when no SAR operation has taken place, the deciding factor should be the Maritime Assistance Service (MAS) declared by the state in whose area of jurisdiction the vessel is located. If there is no MAS declared, in the first instance the Member State with jurisdiction over the

waters in which the vessel is located (eg. through a declared EEZ) should co-ordinate the PoR request unless and until an agreement has been reached to transfer coordination to another coastal state.

3.2. Incidents outside jurisdiction of any one Member State

For PoR requests arising from an incident commencing outside the jurisdiction of any one Member State, the Search and Rescue Region (SRR) will be the deciding criterion for determining who should take on the co-ordination role in the first instance. The state in whose SRR the vessel is located will be deemed in charge of the coordination of the event in the first instance, even though there may or may not be a SAR component to the operation.

The Member State in whose SRR the vessel is located at the time of the PoR request should retain the coordination of the response to that request unless and until an agreement has been reached to transfer coordination to another coastal State in the region, which might grant a place of refuge.

Member States who are involved by virtue of geography, or because they are home to some of the vessel's interests, support the action by co-operating with the co-ordinating state to: gather information; share expertise; provide logistical assets; participate in the risk assessment; and search for potential places of refuge in their territory.

---- Click to come back to PoR Quick Reference ----

3.3. Obligations on Co-ordinating Authority and Neighbouring Member States

When it has been decided that taking the vessel to a place of refuge is the most appropriate course of action, the Co-ordinating Member State should work with neighbouring states (using the **Decision Methodology** in [Appendix D](#)) to identify the nearest, most appropriate PoR, which may be in another state.

At all times, the principal focus should remain the protection of human life and the environment and the reduction of the hazard to navigation.

3.4. Transfer of co-ordination

Responsibility for co-ordinating the incident may be transferred, depending on the evolution of the situation aboard the vessel, or depending on agreements reached between the States involved i.e. the State able to offer a place of refuge. However, for reasons of operational continuity, it may be appropriate for the initial CMS to assume coordination throughout the entire process, with the agreement of the other coastal State(s) concerned.

The transfer of coordination to another coastal state is accomplished with a formal notification, preferably in an electronic format, from the state taking over coordination to the state initially in charge of the event (see [Appendix F](#)).

---- Click to come back to PoR Quick Reference ----

Chapter 4

Requesting a Place of Refuge

Where the safety of life is involved, the provisions of the SAR Convention should always take precedence. This chapter applies where a ship is in need of assistance, without prejudice to/ independently of SAR



4.1. Process

When a decision has been taken by a master, Salvor or other party in charge of the ship to make a formal PoR request, without prejudice to the CA's right to take the decision, the following **process** should be followed:

4.1.1. Appraisal of the situation

The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for the ship's need of assistance. (See [Appendix C](#))

4.1.2. Identification of Hazards and Assessment of Associated Risks

Having made the appraisal, the master, where necessary with the assistance of the company and/or the salvor, should estimate - taking into account the potential future risks - the consequences of the potential casualty taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board. (See [Appendix C](#))

4.1.3. Identification of Assistance / Services Required in place of refuge

The master and/or salvor should identify the assistance they require from the coastal State to overcome the inherent danger of the situation. (See [Appendix C](#))

4.1.4. .Transmission of request to the Member State and cooperation

The formal request for a place of refuge shall be transmitted by the master using the fastest means available to the coastal State MAS/MRCC as designated in [Appendix A](#) and using the Request Form in [Appendix C](#).

A formal request for a place of refuge may also be made by:

- Ship operator / company Designated Person Ashore (DPA)/contracted salvor
- Any other person who is in charge of the ship at the time, and is recognised by national law

The respective coastal State shall ensure that, where applicable, the request is forwarded to the CA as designated in [Appendix B](#).

Unless *in extremis*, formal requests should be made to one CA only, through the national point of contact (MAS or MRCC), and should not be forwarded directly to ports or harbours, unless agreed with the MAS / MRCC and CA. The CA should always be informed if a third party was involved.

Except in very extreme circumstances, simultaneous requests to other MAS/MRCC should not be made.

---- [Click to come back to PoR Quick Reference](#) ----

4.2. Formal Request for a Place of Refuge

The formal request should include the information in [Appendix C](#) and should be made in writing or recorded in another way. The request should be sent either directly to the CA or via the MAS, MRCC, VTS or any other Station nominated by the individual Member State who would then immediately forward it to the CA, in accordance with local arrangements.

Any other information that the CA might require, for example, to ensure compliance with local legislation, such as cargo manifests, stowage plans and the salvor's outline salvage plan should also be forwarded, together with the Formal Request Form.

As a matter of principle, while each state involved in the operation should examine their ability to provide a place of refuge, the final decision on granting a place of refuge is solely the responsibility of the Member State concerned. However, each State should share any information relative to the potential places of refuge they are examining with the other States involved.

4.3. Member States' Plans for allocating a Place of Refuge

To help the efficient management of a PoR request involving more than one state, as the situation may demand or upon request, Member States share the methodology and the relevant parts of their national plan with their neighbouring states²¹.

---- [Click to come back to PoR Quick Reference](#) ----

²¹ If requested by Member States, those receiving information shall be bound by an obligation of confidentiality.

Chapter 5

Risk Assessment & Inspection



5.1. EU Decision Methodology

The EU Decision Methodology (EDM) aims to provide a structured and logical decision making process in a response to a request from a vessel in need of assistance. The process can be used as a checklist or flowchart which provides the sequence of steps to be followed to enable a place of refuge assessment to be properly carried out. The EDM is a recommended process across the EU, which can be supported and implemented through individual Member States national plans. It can be used by all Member States potentially or actually affected by an incident, providing a common foundation on which each Member State can conduct its own risk assessment.

The quicker the decision has to be taken, the priorities to be considered in the decision making process must be those which are considered to be key from a socio economic, public health and environmental perspective.

It follows that the Risk Assessment (RA) must be carried out with great pragmatism in scenarios where quick decision making is essential. In scenarios with a great number of unknowns the responders risk assessment should be carried out with an appropriate safety margin. In some response scenarios the risk assessment(s) to be carried out must be dynamic in a potentially fast changing scenario. In such scenarios the ability for the response team to rapidly re-assess may be crucial. In some straightforward scenarios some steps may be unnecessary and therefore be omitted.

For the decision-making process to be reported in a transparent and reproducible way, the process must be documented precisely, including all considerations which were suggested and ultimately not included.

The EDM follows IMO Resolution A.949(23) Guidelines on places of refuge for ships in need of assistance. The EDM is designed exclusively for the use of Member States involved in handling a formal PoR request.

The allocation of a place of refuge shall, as far as possible, be made on the basis of actual verified information, within a stipulated time period. The rigour and duration of the process for collecting information, evaluating and considering alternatives, ahead of making a decision on a place of refuge, are affected by both the magnitude and urgency of the accident. Some incidents may present such urgency that responders have only hours and minutes to determine the response rather than days for consideration.

The EDM procedure describes the process methodology with the aim of having a pre-agreed and readily reproducible means of determining best practice for place of refuge identification. Every

maritime incident is different to some extent; the permutations for the range of possible scenarios mean that the factors to be considered ought to be broken down into logical information/data sectors. Depending on the situation at hand, the appropriate data needed to feed the EDM is described in [Appendix D](#).

Implementation of EDM: Skills and tools: Who are the key information providers and how do responders engage, collaborate and communicate operationally?

The nature of the incident will determine which kind of information is key and what is desirable overall. The information requirement will determine the group of individuals (representing the data sources) providing that information. The most appropriate individuals will be specialists in their skill area and fully able to contribute effectively to the EDM process in challenging and dynamic situations. Notwithstanding the involvement of this group, the CA remains responsible for taking all final decisions in respect of the PoR request.

--- Click to come back to PoR Quick Reference ---

5.2. Inspection / Expert Analysis

Where it is deemed safe to do so and where time permits, an inspection team designated by the CMS should board the ship requesting a PoR, for the purpose of gathering evaluation data to support the decision making process (EDM).

The team should be composed of persons with expertise appropriate to the situation. Where one or more Member States may be involved with the incident, and where other parties may be potentially involved, then the formation of a multi-national or 'regional' inspection team should be considered. The CMS will retain responsibility for selecting the appropriate team members and inviting participation from other Member States. Due care should be exercised to ensure that formation of a multi-national / regional team does not delay the deployment of the inspection team.

The analysis or inspection should include a comparison between the risks involved if the ship remains at sea and the risks that it would pose to the place of refuge and its environment. Such comparison should cover each of the following points:

- safeguarding of human life at sea;
- safety of persons at the place of refuge and its industrial and urban environment (risk of fire or explosion, toxic risk, etc.);
- risk of pollution (particularly in designated areas of environmental sensitivity);
- if the place of refuge is a port, risk of disruption to the port's operation (channels, docks, equipment, other installations);
- evaluation of the consequences if a request for place of refuge is refused, including the possible effect on neighbouring States; and
- due regard should be given, when drawing the analysis, to the preservation of the hull, machinery and cargo of the ship in need of assistance, as well as possible risks to navigation.

--- Click to come back to PoR Quick Reference ---

Chapter 6

Decision Making & Outcomes

6.1. Competent Authority Final Decision



6.1.1. Decision to grant a place of refuge

The decision by a State to grant a place of refuge on their territory should be immediately communicated to all parties involved and should include any practical requirements set as a condition of entry.

6.1.2. Decision not to grant a place of refuge

Before taking any decision, the necessary risk assessments and/ or inspection visits should always be completed. Unless deemed unsafe, there should be no rejection without inspection. The State that receives a request to provide a place of refuge cannot refuse for commercial, financial or insurance reasons alone.

Whilst each MS should remain sovereign in their decision, if a CA refuses a request for place of refuge, it should immediately communicate to the other parties involved and to the shipowner/operator the information on which its decision has been made, including any assessment relating to:

- Safety persons on board and threat to public safety on shore;
- Environmental Sensitivities;
- Lack of availability of suitable resources at desired PoR and concern over structural stability and ability for ship to make successful safe transit to same;
- Prevailing and forecast weather conditions, ie. Lack of sheltered area for proposed works;
- Physical limitations and constraints incl. bathymetry, navigational characteristics;
- Foreseeable consequences escalation, i.e. pollution, fire, toxic and explosion risk;
- Any other reason.

Copies of the Member State's Risk Assessment and/or Inspection Report(s) should also be made available as appropriate.

---- Click to come back to PoR Quick Reference ----

6.1.3. Subsequent Request to another MS to grant a POR

When the risk assessment carried out following an incident concludes that a place of refuge on another Member State's territory is the only solution in order to preserve the safety of the vessel involved, the safety of navigation and to protect or mitigate the risks to the environment, the CMS refusing the request for a place of refuge for objective reasons shall forward all information relevant to the circumstances on which their decision is based to the State or States to whom the subsequent request [by the operator] is made. Forwarding all relevant information should greatly facilitate the risk assessment and decision making on the subsequent request.

6.1.4. Passage Plan & Monitoring

When a suitable place of refuge has been determined and agreed the CMS will assume responsibility for agreeing a passage plan with the requesting party and will engage with the SMSs as necessary, but in particular where the casualty may have to pass through or transit in close proximity to another MS's jurisdiction [(in accordance with relevant UNCLOS provisions)]²².

In order to be prepared to face potential difficulties during the transit to the designated place of refuge, Member States should consider on one or more backup places of refuge en route.

---- Click to come back to PoR Quick Reference ----

²² Articles 194 and 195 of UNCLOS establish obligations of coastal States to prevent, reduce and control pollution to the marine environment caused – among other factors – by shipping, as well as not to transfer environmental hazards on to other sea areas. In addition, Articles 198 and 199 of UNCLOS lay down coordination rules for neighbouring States dealing with pollution incidents, including a duty to notify each other and to draw up joint contingency plans.

Chapter 7

Financial Security

Financial security, generally in the form of insurance, for maritime claims for specific types of damage and costs (e.g. oil pollution, wreck removal) covers a ship in need of assistance for potential liabilities, including potential economic losses incurred by third parties during the accommodation of a ship in a place of refuge.

Ships over 300gt are required (under Directive 2009/20/EC) to carry proof of insurance cover for maritime claims irrespective of the flag they fly when they enter a port under a Member State's jurisdiction, and – in some cases – when they operate in territorial waters of a Member State. Also, ships over 300 gt flying the flag of a Member State shall – in any event – have insurance cover in line with this requirement. This insurance cover may be in the form of an 'International Group of P&I Clubs Certificate of Entry' or another type of financial security, including self- insurance.

A certificate of insurance that is in line with EU law requirements must contain at least: the ship's name, IMO number and port of registry, the shipowner's name and principal place of business, the type and duration of the insurance, and the name and principal place of business of the insurance provider.

In addition, a ship will carry certificates of insurance issued for liabilities arising under a number of IMO Conventions that cover pollution prevention and clean up and costs arising from activities associated with a vessel in need of assistance, where such Conventions are in force in the Member State(s) concerned or where they are required by the State of the ship's registration.²³

Information on potential liabilities and details of insurance cover pertinent to the accommodation of ships in need of assistance can be found in [Appendix J](#).

7.1. Operational action points

On an operational level the issue of financial security/insurance, cost recovery and compensation can be reflected in **3 key action points**:

(a) Any **procedures** applicable to liability and financial security for places of refuge should be outlined **in the national plans** for the accommodation of ships in need of assistance, in accordance with existing EU law, which are available to the CA (not public) and **can be shared with parties involved** in the incident in hand;

(b) CAs can **seek proof of financial security in accordance with existing international and EU law** (see above [Chapter 2](#) on 'Information Gathering'), but they cannot be exonerated from their **obligation to assess and respond in a timely manner to a request** for a place of refuge on the basis of the absence of a certificate of insurance in line with Directive 2009/20/EC;

(c) CAs **cannot refuse to accommodate a ship in a place of refuge on the basis of the lack of an insurance certificate in line with Directive 2009/20/EC** alone.

²³ The IMO publishes a comprehensive table on the status of ratification of all IMO Convention, which is updated monthly and can be found at: <http://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx>

---- [Click to come back to PoR Quick Reference](#) ----

Chapter 8

Media and Information Handling

8.1. Media and Information Handling

The delivery of accurate, clear, timely and up to date information and advice to the public and other key stakeholders is an important aspect of the successful handling of any shipping incident. Media handling should be incorporated into national contingency planning and a media handling procedure should be developed.

8.2. Key Principles

- ❖ Media activity must not interfere with the management of the incident in any way; particularly it should not impede the operational activities of the emergency services. Media speculation should not be considered when making the decision to grant a place of refuge
- ❖ All steps should be taken to protect victims from press intrusion.
- ❖ Only factual information should be provided. There should be no speculation about causes, future developments, or actions.
- ❖ Information and advice should not be released by one organisation if it covers the area of responsibility of another, UNLESS the information (and its release) has been agreed by the responsible organisation.

8.3. Key interest groups

- ❖ Press and Media
- ❖ General public, including NGOs and civil society
- ❖ Ministers, national and local authorities, European Commission
- ❖ Shipping and insurance industries, ports, harbours, terminal operators

8.4. Key actions for persons handling incident

- ❖ KNOW who is responsible for activating media handling process/establishment of Media Team for the incident (on the understanding that the media team may be required for a longer duration)
- ❖ ARRANGE regular briefings between different response cells (eg. Salvage Control, MRC, onshore clean-up team etc.) – either in meetings, or by telephone/video conference.
- ❖ IDENTIFY the designated responsible person(s), who will:
 - liaise between CA and press;
 - take the lead in providing strategic SITREPS to national authorities and SSN;
 - communicate with key interest groups contacts when there are significant developments to report
- ❖ FOLLOW Key Principles at all times

---- [Click to come back to PoR Quick Reference](#) ----

Chapter 9

Lessons Learned

9.1. National & Regional De-briefs

Member States should hold a de-brief session after each significant incident.

As a minimum, the de-brief should consider the incident background, response factors (e.g. co-ordination, communications, risk assessment, decision making and any other aspects considered relevant. Depending on the nature of the incident, the debrief could either be for all the authorities and stakeholders involved, or smaller sub-groups could be convened to focus on particular aspects of the incident.

Where appropriate, neighbouring or other regional Member States should be invited to participate. If the debrief identifies issues that might be of wider interest, the outcomes from the debrief process could be shared at regional and/or EU MS level.

The methodology for the Debrief & Exchange could follow the IMO Resolution 949 annex 2 Guidelines for the evaluation of risks associated with the provision of places of refuge. Although the annex is meant to be used in the decision making process, the same list is useful to check the actions taken in the Debrief & Exchange.

Reference is also made to the Guidelines that were produced in the Consultative Technical Group under EMSA: *Common Assessment Framework for Lessons Learned: response during major oil pollution incidents at sea.*

It is recommended that a task manager is appointed to report on the evaluation, conclude on the outcomes and produce a list of action points aimed at improving procedures for the future handling of vessels in need of assistance.

9.2. Places of Refuge CA Co-operation Group De-brief

The group established under the VTMS Directive (art.20.3) – the Member States Cooperation group on Places of Refuge – meets regularly to discuss and exchange expertise on all matters related to ships in need of assistance and places of refuge, including lessons learned usefully shared within the Co-operation Group with the aim to improve measures taken generally and pursuant to these Guidelines. Depending on circumstances such discussions may also involve industry stakeholders.

9.3. Exercises & Workshops

If it is thought appropriate, lessons learned from an incident could be the subject of a regional or national exercise, or a smaller exercise at a more local level e.g. port authorities. An exercise could focus on the handling of the whole incident, or it could concentrate on one or two aspects of what happened.

Exercises could either be “live”, or take the form of a table top exercise. In addition to National or Regional exercises, the EU may facilitate workshops and/or desk top exercises to disseminate lessons learned and to test any new procedures or protocols as appropriate.

N.B. It is recognised that these Operational Guidelines may place additional resource demands on CA's and it is fundamental to the success of an emergency response that such resources are in place, operational and exercised prior to any event.

--- Click to come back to PoR Quick Reference ---

Appendix A

List of MAS / MRCC

---- Click to come back to PoR Quick Reference ----

Direct access to lists of MAS/MRCC via this link

<http://emsa.europa.eu/implementation-tasks/places-of-refuge.html>

In situations involving also States outside the European Union the user can seek information using this link:

<http://www.imo.org/en/OurWork/Safety/Navigation/Pages/PlacesOfRefuge.aspx>

On this webpage, the circular can be downloaded by clicking on the circular number on the right hand side of the page.

Attention is drawn for the need to consult the latest revision of the IMO Circular, as it may have been revised.

Attention is also drawn to Article 22.2 of Directive 2002/59/EC as amended:

Article 22

2. Each Member State shall ensure that the shipping industry is properly informed and regularly updated, notably via nautical publications, regarding the authorities and stations designated pursuant to paragraph 1[CA, port authorities and coastal stations], including where appropriate the geographical area for which they are competent, and the procedures laid down for notifying the information...

Appendix B

List of Competent Authorities

---- Click to come back to PoR Quick Reference ----

Direct access to designated Competent Authorities (CA) in the European Union is via

<http://emsa.europa.eu/implementation-tasks/places-of-refuge.html>

Appendix C

--- Click to come back to PoR Quick Reference ---

Formal Place of Refuge Request Form

Note: For Places of Refuge requests following SAR action it is likely that much of the ship/cargo/bunker information will already be held by the MRCC / MAS.

	Request for Place of Refuge
Date:	.....
From	Master: .....[MV NONSUCH] Xxxx Salvage PLC
To	CA (via MAS/MRCC)* ²⁴
	For attention of: Competent Authority
Section 1	<p>Appraisal of the situation</p> <p>The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for his/her ship's need of assistance. [IMO Guidelines A.949(23) paragraph 1 of Appendix 2 refers].</p>
Section 2	<p>Identification of Hazards and Assessment of Associated Risks</p> <p>Having made the appraisal above the master, where necessary with the assistance of the company and/or the salvor, should estimate the consequences of the potential casualty, in the following hypothetical situations, taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board:</p> <ul style="list-style-type: none"> - if the ship remains in the same position; - if the ship continues on its voyage; - if the ship reaches a place of refuge; or - if the ship is taken out to sea.
Section 3	<p>Identification of the required actions</p> <p>The master and/or the salvor should identify the assistance they require from the coastal State in order to overcome the inherent danger of the situation. [IMO Guidelines A.949(23) paragraph 3 of Appendix 2 refers].</p>
Section 4	Supporting Documentation
Section 5	Any other Member States / Ports Contacted to Date

* See [Section 1.1.5](#)

Section 6	<p>Information from the MS/Port contacted [At the end of its assessment process] The recipient CA should inform the requestor of its action [Using this space in the request].</p>
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Appendix D

--- Click to come back to PoR Quick Reference ---

Decision Making Tool

Incident Pre-Planning

As part of their contingency planning work individual Member States should create inventories of key information providers with their contact details and available means to set up conferencing when initiated for response. Essentially: who are the key individuals with critical information and decision making capability?

STEP 1 – Determination of relevant key data to feed the QDM

Information gathered and already available (under chapter 2) should be used as far as is possible.

The assignment or rejection of a place of refuge is arrived at as a result of weighing the risks for public health and socio economic interests and the marine and coastal environment. A minimum amount of information is required for assessment even in cases of highest urgency.

Key Data to be collected if not already available in the SSN System (as far as available and depending on the situation at hand)

Initial Information
<ul style="list-style-type: none"> ○ Vessel and Crew <ul style="list-style-type: none"> ○ Vessel Name and Flag; ○ Vessels Identification Number (IMO Number); ○ Type of vessel, cargo classification; ○ Number of persons on board; Is there a risk to safety; ○ Details of any casualties on board or in the vicinity of the ship; ○ Size, tonnage, length, beam and draft of ship; ○ Vessel position, course and speed. ○ Departure and destination ports. ○ Nature of Incident <ul style="list-style-type: none"> ○ Nature of the incident (collision, grounding, loss of structural integrity, etc.) ○ Damage assessment: structural and mechanical integrity of the ship: ○ Precise position of ship + close proximity to other ships, shallow water, shore or any other hazard; ability to anchor; ○ Course and speed (underway, making way, adrift or at anchor); ○ Environmental conditions <ul style="list-style-type: none"> ○ Weather, sea state and tidal conditions; ○ Ice conditions ○ Pollution potential <ul style="list-style-type: none"> ○ Type and quantity of bunker fuel on board; ○ Cargo details, including location on board.

- Nature and quantity of any Hazardous or Noxious Substances (HNS) or cargo classed as Dangerous Goods (DG); packaging details.
- Actual pollution or potential for such;
- Observations to aid with estimation of release rates.

- **Environmental and Public Health Impact Assessment**
 - Statutory bodies involved
 - Proximity to human population
 - Key environmental threats
 - Key environmental sensitivities, shallow water, sensitive shorelines, environmental designations
 - Proximity to Ports / other ships

- **Owners/Insurers**
 - Name (s) registered owners or operators:
 - Name and contact details of hull insurers (or of the lead hull insurer authorised to act on behalf of hull insurers) and/or P&I Insurers
 - Name and contact details of Classification Society;
 - Name and contact details of the “Designated Person Ashore” as nominated on ISM documentation;
 - Name and address of agents or representatives.

- **Initial response / actions underway**
 - Response actions taken by the ship (salvors engaged or contracted);
 - Any other measures already taken;
 - Nature of Immediate assistance required;
 - Details of place of refuge request; what services required:
 - Inspection including diving, repair work, cargo transfer, etc.;

- **Master / Salvor’s Initial Risk Assessment**
 - master’s appraisal of vessel:
 - remains in initial position;
 - continues her voyage;
 - reaches a place of refuge;
 - is taken out to sea.

- **Future intentions**

Data sources: where do we get the information from?

Information on the vessel, position and HAZMAT available in the Union Maritime Information and Exchange system, SSN, should be used as far as is possible.

Source	Information
○ Casualty Crew	Present condition of ship, all crew actions to date
○ Shipping company, owner, charterer	Initial condition of ship, status of insurance, drawings/specification
○ Class	Expert analysis of damage condition and proposals for mitigation
○ Inspection / Fact Finding Mission	Present damage condition, evaluation of human health/life impact environmental impact - real and potential.

○ Salvors	Present vessel condition, Risk analysis, Salvage plan,
○ Agent/Harbour	Cargo manifest / bunkers / HNS / container manifests.
○ MAR-ICE, SAFESEANET, BAPLIE, CHEMDATA	Risk assessment for cargo (especially DG/HNS) original condition and cargo fate in the marine environment post-accident
○ Statutory Environmental Bodies	Environmental status of area surrounding casualty and all PoR locations proposed with focus on key sensitivities,
○ Public Health/regulators	Public health risk, atmospheric and marine modeling wrt cargo and bunkers.
○ Coast Guard	Communications overall, weather forecast, ETV's, aerial surveillance, aids to navigation
○ Port / Local Authority	Resources available in and adjacent to Port, berth availability,

STEP 2 – Preparation of an emergency incident analysis: Providing information in an appropriate reproducible structure to facilitate the PoR decision making process

All relevant information available from STEP 1 is to be structured and presented in such a way to facilitate decision making on the best option(s) to deal with the casualty, which include consideration of a PoR. The likely consequences of each considered option should be reflected on individually according to time available. The search for possible and realistic PoR's can be ongoing in parallel with the emergency analysis. The qualitative confidence level for the data analysis is as good as the information available on the day and the methodology adopted.

Emergency analysis of the available data should consider adopting the following steps:

- Assimilating and prioritising key information. Which factors are key in terms of the threat they present and therefore must be agreed as highest priority and addressed most urgently?
- Assessment of realistic worst case scenario(s) and best potential means to mitigate.
- Rationale for responders promoting specific PoR recommendations and Port and Harbour Authorities rejecting / accepting a PoR request.
- Costs for all realistic options, ball park figures. Are the mechanisms/funds available to cover all options? (see chapter 7 and appendix K)
 - Costs for response
 - Cost covered by owner, insurer, P&I Club, cost ceilings?

STEP 3 – Risk assessment for a vessel to remain at sea

The decision about whether the vessel should be moved to sheltered waters or remain at sea is considered by taking account of the risks and benefits based on operational criteria

Can the vessel remain at sea as an alternative to moving to a PoR

- Risk to human life in case of evacuation / controlled disembarking
- Emergency Response promising?
- Environmental impact – worst case?
- Risk to socio-economic interests?

- Navigational limits for transit and other conditions?
- Weather forecast, including likely sea energy conditions.
- Possibility of transfer to neighbouring State with any operational benefit?
- Increased risk of damage to the vessel

STEP 4 – Risk assessment for a vessel to be directed/ recommended to a PoR in a sheltered area or in a Port

Vessel directed to a sheltered area (Place of Refuge)

Weighing-up of benefits and risks posed by the vessel entering harbour approach, the roads or channels on the basis of operational criteria: decision to allow the vessel approaching sheltered waters close the coast line.

A suitable Place of Refuge is to be selected on the basis of contingency plans and weighing-up of the likely relevant risks specific to the casualty, and the potential PoR location.

- Detailed RA for vessel remaining at sea.
- Risk of sinking?
- Risk to public health from casualty?
- For any proposed PoR? Can vessel reach in time?
- Socio-economic and environmental risks? Risk for fish farms? High cost risks?
- Risk for sensitive property / area?
- Shore side access and infrastructure available?
- Risk to navigation for routine marine traffic?
- Suitable weather conditions/ sea energy forecast?

Vessel moves to a Place of Refuge

Weighing-up of benefits and risks being posed by the vessel enters the harbour on the basis of operational criteria it is decided to allow the vessel entering the protected area of a port and can be reached by land based response forces.

- Detailed RA for vessel remaining at sea.
- Has a Place of Refuge been approved? Can it be reached in time?
- Can port accommodate vessel draught?
- Port facilities with likely mitigation measures, e.g. vacant suitable berth (with cranes).
- Risk to navigation? Risk of (significant) economic impact on the port? And/or local area?
- Risk of environmental impact en route and nearby PoR?
- Transfer to an alternative sheltered area available as an option?
- For any proposed PoR? Can vessel reach in time?

Decision for assigning a specific PoR

Once the technical decision on the most appropriate PoR is agreed it must be discussed with the relevant stakeholders, except in cases where a direction can be made in an emergency situation. In general, the decision is made following consultation which may include local harbour masters, the traffic control centres and other local authorities representing socio-economic and environmental interests as appropriate. The decision-making process will be supported by expert contributions of legal, environmental, nautical and other specialised disciplines.

The final decision will be made by the designated Competent Authority.

Directing/ recommending a vessel to an agreed place of refuge

Once the decision on the most appropriate PoR is taken it has to be transferred by an instruction to the Master or the Salvor in charge for the casualty and to the local authorities, the harbor master and other stakeholders in charge for the assigned PoR.

The CA is responsible to decide if a Place is to be allocated or not. Such a decision has to be taken in good time especially if a disaster has to be averted. The CA should therefore have the necessary power to intervene when required and to give the necessary directions. However, in view of the impact this may have on 3rd party port facility operators, it is recommended that such decisions are to be taken following consultation with Coast Guard and/or Navy, port authorities, harbour masters, local governments, environmental authorities, etc.

The allocation of a PoR is dependent on the actual situation and has to be chosen carefully, therefore the following has to be taken into consideration:

- Safety and protection of the persons on board
- Safety of the ship and cargo
- Proximity of residential areas and population density where the health and safety of human life in the vicinity of the ship is given priority
- Protection of the sea and coastal regions
- Protection of sensitive installations and the socio-economic impact on the area
- Wind and weather forecasts
- The impact on 3rd party privately operated terminals and/or facilities
- Suitable place for in water surveys taking into consideration underwater visibility and weather conditions to enable the assessment the vessel's structural integrity by divers
- Tidal conditions
- Sheltered anchorage areas for prevailing weather conditions and water depths
- Adequate manoeuvring space for handling a vessel under tow
- Access by land and sea to deploy salvage and pollution response equipment and proximity of such resources
- Security issues in relation to ISPS

This information should be readily at hand for the CA to use when necessary and when dealing with an incident.

The CA is to ensure that from the information it has in hand the situation is under control and is to establish confirmation of who is responsible for the ship at that time.

In the case where a ship is already at a safe PoR and there is a request to transfer that ship to another PoR, the entity responsible for the ship at the time should formally confirm that the ship is fit for the transfer. The CA should then confirm the status of the ship and, once all parties (including the CA for the proposed new PoR) agree, the transfer should be permitted in accordance with any conditions imposed by the relevant CAs.

Appendix E

--- Click to come back to PoR Quick Reference ---

Integrated Maritime Services

The integrated maritime services of the Union Maritime Information and Exchange System, allows Member States that so wish to make full use of the integrated vessel reporting information from terrestrial and satellite AIS, LRIT, VMS, as well as national vessel position data such as coastal radar and patrol assets. Services are being developed, and include access to meteorological and oceanographic data, as well as to automated behaviour algorithms.

IMS combines information from the various traffic and pollution monitoring systems operated at EMSA. In addition to the integrated position reports, and the Earth Observation related satellite imagery and oil spill alerts from CleanSeaNet the services provide access to Satellite-AIS data as well as fisheries VMS data (depending on strict user access policies), all of which considerably complement both the geographical extent and frequency of coverage for monitoring an incident and/or vessel (i.e. at the site of the vessel in need of assistance, en-route to PoR and at the PoR).

Integrated maritime services may support the PoR related activities, as follows:

- During the initial alert : the identification and positioning of the vessel involved (especially if outside T-AIS coverage), the collection of the information specific to the vessel (integrated ship profile) and her cargo, the detection and information of vessels close by or liable to assist, provision of EO satellite imagery, as well as access to relevant met-ocean information.
- During the operation: the follow up on the vessel's situation, progress on her transit towards a place of refuge, surveillance of traffic in close vicinity (impact on areas of dense traffic, etc.)

In addition EMSA provides an advanced Search and Rescue service to the EU Member States. The service is called the 'Enhanced SAR SURPIC' (Search and Rescue Surface Picture) and it can be used by maritime Search and Rescue authorities during rescue operations. The SAR SURPIC provides an overview picture of the ships present in any ocean region, worldwide. Nearby ships can then be contacted to go to the rescue of the seafarers in distress. The SAR SURPIC combines information on the position of ships from all available sources, including satellite AIS and LRIT. The system can also include the position information of fishing vessels from VMS.

Appendix F

--- Click to come back to PoR Quick Reference ---

Member State Handover Co-ordination Form

All sections are to be completed to ensure that information has not been mistakenly omitted, if a section is not required or not applicable an entry to that effect should be made.

Identifier	Function	Information Required
A	Identity of Casualty Vessel	
	Name and call-sign of the vessel	
	IMO Number	
	Flag State	
B	Reason for refuge (Brief details of issue affecting the vessel)	
C	Member State Transferring Co-ordination	
	Identity of Member State	
	Name and title/position of the Competent Authority	
D	Member State Accepting Co-ordination	
	Identity of Member State	
	Name and title/position of Competent Authority	
E	Dates and times	
	Date and time of agreement to transfer co-ordination	
	Agreed date and time of actual co-ordination transfer – if different from above	
F	Position of co-ordination transfer	
	Latitude & Longitude	
	Bearing and distance from conspicuous point landmark/port/harbour etc.	
	Anchorage latitude and longitude	
G	Place of Refuge (if known)	
	Name of agreed destination – port/harbour/anchorage	
H*	Other Member State(s) if there is a requirement for transit through other MS territorial waters	
	Identity of member state	
	Identity of member state	
I	Transfer Completion - Member State Accepting Coordination	
	Identity of Member State	
	Name and title/position of Competent Authority	
	Date and time of completion	
J	Transfer Completion - Member State Transferring Coordination	
	Identity of Member State	
	Name and title/position of Competent Authority	
	Date and time of completion	

K	Reason for not granting a Place of Refuge	

H* - Template to allow for additional member states to be inserted if/as required.

Guidance

Transfer of Co-ordination

A formal transfer of co-ordination is required to ensure a seamless transition of co-ordination from one member state to another when a vessel is in urgent need of a place of refuge to ensure the safety of the vessel, its crew and cargo, thereby minimising the risk to personnel, potential pollution damage to the environment or a hazard to navigation.

A transfer of co-ordination should include relevant information focusing on the actual transfer of co-ordination between member states and should not include detailed information. Detailed and essential information relating to the incident and the casualty vessel(s) should have been previously, and continually, distributed by the use of the Place of Refuge Situation Report(s) and discussed prior to reaching an agreement to transfer co-ordination.

If a collision occurs and both vessels were in need of a place of refuge two separate templates would be required, one for each vessel. The inclusion of both vessels on the same template would only be appropriate if both vessels were being provided with a place of refuge by the same member state and be given refuge at the same location. As this situation would be extremely unlikely individual reports should be made for each vessel.

If a transfer of co-ordination is required on more than one occasion for the same incident, for example a casualty vessel passing through other Member States waters, the format should be repeated rather than attempting to include any additional transfers on one document.

There is a requirement to identify an agreed position, date and time of the proposed transfer of co-ordination. There is also a condition to acknowledge and document that the transfer of co-ordination has been completed and retained on file by both Member States.

There are four steps required to complete the transfer of co-ordination.

Procedure for completion of the Transfer of Co-ordination template:

- *Transferring Member State is to complete the template up to and including section 'H', when done so they are to send to the Accepting Member State (and other Member States if applicable) by e-mail or facsimile.*
- *When the actual transfer of co-ordination has been completed the Accepting Member State is to complete section 'I' when done so send to the Transferring Member State.*
- *Transferring Member State to complete section 'J'.*
- *The completed template is to be sent back to the Accepting Member State as a formal notification and record of transfer completion.*
- *At the end of the assessment process, when transferring the coordination to another MS the reason(s) for not granting a PoR should be stated by completing section 'K'.*

Appendix G

---- Click to come back to PoR Quick Reference ----

SITREP Template - including for Place of Refuge (POR)

All sections should be completed to ensure that information has not been unintentionally omitted, if a section is not required, not applicable or details are unknown an entry to that effect should be made.

The first section is the original SITREP template as currently exchanged via SSN (and the information therein may already be available). The second section relates to the POR specific information (see also guidance below).

Transmission (Distress/Urgency)	
Date and Time	
From	
To	
SITREP: number	

Identifier	Function	Information Required
A	Identity of casualty	IMO, number, Name of vessel, call-sign, flag state
B	Position	Latitude/longitude or bearing and distance from a mark
C	Situation	Type of message - e.g. distress/ urgency, date/time, nature of distress/urgency, e.g. fire on board, collision, medical evacuation, grounding flooding, abandon ship, capsizing, list, shifting of cargo, engine failure, structural failure, steering gear failure, electrical generating system failure, navigational equipment failure, etc.
D	Number of persons at risk	
E	Assistance required	A request by the co-ordinating station for specific assistance from one or more of the addressees
F	Co-ordinating MRCC	
G	Description of casualty	Physical description, owner/charterer, cargo carried, passage from/to, lifesaving appliances carried, etc.
H	Weather on scene	Wind, sea/swell state, air/sea temperature, visibility, cloud cover/ceiling, barometric pressure
J	Initial actions taken	By casualty and co-ordination centre
K	Search area	As planned by the co-ordinating MRCC
L	Co-ordinating instructions	OSC/ACO designated, units participating, communications, etc.
M	Future plans	
N	Additional information/conclusion	Include time SAR Operation terminated
O	Address where cargo information can be found	

Place of Refuge (POR) Situation Report (POR Specific Information)

PoR_1	Report Number:	Ships name followed by the sequential number of the report (e.g. "MV STARLIGHT - POR Situation Report No.01")
PoR_2	Coordinating Authority/Member State:	Identification of the Coordinating Authority/Member State
PoR_3	Ship Information	Ship type, length, breadth, draught, gross and deadweight tonnage, height (bridge/cabling clearance) etc., as required

PoR_4	PoR Status	i) Status Report ii) Agreement iii) Transfer/handover
PoR_5	Transfer of Coordination Position	Coordinates: A 4-digit group giving latitude in degrees and minutes suffixed with N (north) or S (south) and a 5-digit group giving longitude in degrees and minutes suffixed with E (east) or W (west) or True bearing (first three digits) and distance (state distance) in nautical miles from a conspicuous point
PoR_6	Course	True course as a 3-digit group
PoR_7	Speed	Speed in knots and tenths of knots as a 3-digit group
PoR_8	Port of Departure	Name of last port of call
PoR_9	Entry in MS Area of Responsibility	Date, time ²⁵ and point of entry into the member state's area of responsibility, if applicable, expressed as in (PoR_5).
PoR_10	Route	Intended track, including waypoints, as specified by agreed passage plan
PoR_11	Radio Communications	State full names of stations/frequencies guarded and main communications frequency for the incident. (see also field L above)
PoR_12	Exit from MS Area of Responsibility	Date, time ¹ and point of exit from member state's area of responsibility, expressed as in (PoR_5).
PoR_13	Original Destination	Name of original port of destination
PoR_14	PoR Destination	Name of place of refuge (e.g. port or area)
PoR_15	Pilot	State whether deep-sea or local pilot is on board
PoR_16	Next Communication Report	Date time group ¹ of the next agreed scheduled communication report
PoR_17	Current Draught	Maximum present static draught expressed as a 4-digit group in meters and centimetres. If draught is not consistent for the length of the vessel draughts are to be noted as Bow, Mid-ships, Stern, port and starboard as appropriate.
PoR_18	Cargo and Quantity	Cargo and details of any dangerous cargo as well as harmful substances and gases that could endanger persons or the environment. Quantities should include individual weights and classification of multiple hazardous cargoes.
PoR_19	Defect, damage, deficiency, limitations	Brief details of defects, damage, deficiencies or other limitations; radar, steerage, communications
PoR_20	Pollution/dangerous goods lost and potential to lose overboard	Brief details of type of pollution (oil, chemicals etc.) or dangerous goods lost, or potential to lose, overboard including bunker fuel; position expresses as in (PoR_5).
PoR_21	Weather Forecast	Weather forecast for the next 24 hours
PoR_22	Ships Agent/ Representative	Ships P&I Club/H&M Insurers/charterers and/or owner
PoR_23	Salvage / Towing	Name of Salvage and/or Towing Company if appointed
PoR_24	Medic	Doctor, physician's assistant, nurse, personnel without medical training
PoR_25	Persons	Number of persons on board by: i) Passengers ii) Crew iii) Salvors iv) Assessment team
PoR_26	PoR Incident Details / Remarks	Any other information – including as appropriate brief details of the incident; explosive potential, structural integrity, health concerns, water ingress and of other ships involved either in the incident, providing assistance or salvage. Maritime Security declaration of vessel's flag state
PoR_27	Relay	Request to relay information, if necessary, to other member states and/or reporting systems.
PoR_28	End of Report	End of Report

²⁵ Date and Time format: “YYYY-MM-DDThh:mm:ssTZD”. Where TZD = time zone designator (Z or +hh:mm or -hh:mm).

Guidance

Detailed essential incident and ship information will be required by a Member State prior to agreeing to a formal Transfer of Co-ordination request, this information should be distributed by the use of a SITREP Template including Place of Refuge (POR) Situation Report.

Information that may be required by some Member States can be extensive and a template cannot be developed to include every eventuality or every member state requirement. The sections included in the template should satisfy the majority of Member States and their requirements however any additional requests for information received can be entered into section 'PoR_25'.

The template needs to include the relevant information without initially having to emphasise every detail (to be filled in as far as possible in the light of the given circumstances), the situation may be deteriorating and it is important to share the initial situation information with all participating Member States as soon as possible.

When further information is apparent whether by deterioration or improvement of the situation additional particulars should be entered onto the template and distributed appropriately.

Prior to a Transfer of Co-ordination agreement every effort should be made to ensure the template is completed with all details and forwarded to the Member State.

The most up to date SITREP including POR should be sent to the Accepting Member state, and other Member States, if involved, immediately following, prior to or at the same time as the Transfer of Co-ordination template document.

The POR Situation Report Number (PoR_1) are to include the ships name and be numbered consecutively, the initial report submitted by the original Co-ordinating Member State, should state the Ship Name(s) followed by No.1, example;

'MV STARLIGHT - POR Situation Report No.01'

Thereafter the Transferring Member State, which may be the original Co-ordinating Member State, will have the responsibility to provide updates on the situation until such time as a Co-ordination Transfer has occurred.

When the Co-ordination Transfer has been completed the Accepting Member State will assume responsibility for continuing to provide the latest information via the SITREP with POR Situation Reports to other Member States that have been involved.

When the ship has reached its final refuge destination (PoR_13) it is the responsibility of the new Co-ordinating Member State (Accepting Member State) to issue a final report using the next consecutive number and including 'Final' in the title, example;

'MV STARLIGHT - POR Situation Report No.05 & Final'

This will indicate to the other Member States involved that the operation to provide a safe haven for the ship has been completed.

Appendix H

--- Click to come back to PoR Quick Reference ---

International and European Law – relevant rules

International Law

UN Convention on Law of the Sea (UNCLOS 1992)

UNCLOS in Part XII on the "Protection and Preservation of the Marine Environment" contains a number of provisions that frame the general obligation of coastal States to prevent and fight pollution of the marine environment following incidents in their territorial sea or beyond.

Article 192: "States have the **obligation to protect and preserve** the marine environment". Article 194(2): "States shall take **all measures necessary** to ensure that activities under their jurisdiction or control are so conducted as **not to cause damage by pollution** to other States and their environment, **and that pollution** arising from incidents or activities under their jurisdiction and control **does not spread beyond the areas where they exercise sovereign** rights in accordance with this Convention."

Article 194:"1. States shall take, individually or jointly as appropriate, all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source, using for this purpose the best practicable means at their disposal and in accordance with their capabilities, and they shall endeavour to harmonize their policies in this connection. 2. States shall take all measures necessary to ensure that activities under their jurisdiction or control are so conducted as not to cause damage by pollution to other States and their environment, and that pollution arising from incidents or activities under their jurisdiction or control does not spread beyond the areas where they exercise sovereign rights in accordance with this Convention.3. The measures taken pursuant to this Part shall deal with all sources of pollution of the marine environment. These measures shall include, *inter alia*, those designed to minimize to the fullest possible extent: (a) the release of toxic, harmful or noxious substances, especially those which are persistent, from land-based sources, from or through the atmosphere or by dumping; (b) pollution from vessels, in particular measures for preventing accidents and dealing with emergencies, ensuring the safety of operations at sea, preventing intentional and unintentional discharges, and regulating the design, construction, equipment, operation and manning of vessels; [...]"

Article 195: "In taking measures to prevent, reduce and control pollution of the marine environment, States shall act so as **not to transfer, directly or indirectly, damage or hazards from one area to another or transform one type of pollution into another.**"

Article 198: "When a State becomes aware of cases in which the marine environment is in imminent danger of being damaged or has been damaged by pollution, it shall immediately notify other States it deems likely to be affected by such damage, as well as the competent international organizations."

Article 199: "In the cases referred to in article 198, States in the area affected, in accordance with their capabilities, and the competent international organizations shall cooperate, to the extent possible, in eliminating the effects of pollution and preventing or minimizing the damage. To this end, States shall jointly develop and promote contingency plans for responding to pollution incidents in the marine environment."

Article 221: "1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to **take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests**, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences. 2. For the purposes of this article, "maritime casualty" means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo." (extra-territorial application)

Article 225: "In the exercise under this Convention of their powers of enforcement against foreign vessels, States **shall not** endanger the safety of navigation or otherwise create any hazard to a vessel, or **bring it to an unsafe port or anchorage**, or expose the marine environment to an unreasonable risk, shall not bring to an unsafe port or anchorage".

In relation to liability of the State towards other States and of the State towards private parties, UNCLOS contains a few provisions which could be of direct relevance in cases involving accommodation of a ship in a place of refuge.

Article 235(1): "States shall be liable in accordance with international law".

Article 304: UNCLOS provisions "are without prejudice to the application of existing rules and the development of further rules regarding **responsibility and liability under international law**".

The above-mentioned Articles simply make reference to the general international rules on State responsibility for internationally wrongful and non-wrongful acts that apply also in cases involving ships in need of assistance.

Article 232: It deals specifically with State liability for enforcement measures taken to protect the marine environment and provides that "**States shall be liable for damage or loss attributable to them arising from [enforcement] measures** taken (...) when such measures are unlawful or exceed those reasonably required in the light of the available information. States shall provide **recourse in their courts** for actions in respect of such damage or loss."

Article 235(2): It requires States to "**ensure that recourse is available** in accordance with their legal systems **for prompt and adequate compensation** or other relief in respect of damage caused by pollution of the marine environment by natural or juridical persons under their jurisdiction".

It is clear in the latter two provisions that international law only sets out the general framework for State liability to be developed in detail in national law.

Salvage Convention 1989

Salvage Convention provides for the duty of a coastal state to take into account cooperation among the actors concerned to enable a successful salvage when taking up a decision relating to place of refuge matters.

Article 11: “State Party shall, whenever regulating or deciding upon matters relating to salvage operations, such as admittance to ports of vessels in need of assistance or the provision of facilities to salvors, **take into account the need for co-operation between salvors, other involved parties and public authorities** in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.”

Intervention Convention 1969

This instrument gives States broad rights to take measures on the high seas to prevent or mitigate or eliminate dangers arising from oil pollution casualties.

Article VI: a State that has taken measures “causing damage to others shall be obliged to pay compensation to the extent of the damage caused by the measures which exceed those reasonably necessary to achieve the end”.

The same rule has been extended to apply to other forms of pollution than oil, through Article II of the **1973 Protocol** to the Convention.

The above provisions do not amount to a general obligation for coastal States to accommodate a ship in need of assistance, but their combined effect may impose certain obligations on them to find the most environmentally friendly and safest solution in a situation of distress.

IMO Guidelines on Places of Refuge 2003 (Resolution A.949(23))

The Guidelines are not binding but have become the most important guidance document for such situations. In recognising “the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal state to protect its coastline”, the Guidelines provide for a checklist of actions for the master of the ship and salvors to undertake when the ship needs assistance and a checklist of elements that the coastal authorities should take into consideration while deciding on the acceptance or refusal of a ship to a place of refuge. The purpose is to provide all parties involved with a framework enabling them to respond effectively and to correctly assess the situation of the ship in need of assistance.

The above mentioned rules apply to the situations when there are no persons in distress on board of the ship. In the contrary case (i.e. danger to human life), rules of **International Convention for the Safety of Life at Sea (SOLAS 1974)** and **International Convention on Maritime Search and Rescue (SAR 1979)** take precedence, as well as the IMO SAR Guidelines (Resolution A.950(23)).

IMO/ILO Guidelines on Fair Treatment of Seafarers in the Event of Maritime Accident (IMO Resolution LEG.3(91))

The Guidelines give advice on steps to be taken by all those who may be involved following an incident: the port or coastal State, flag State, the seafarer's State, the shipowner and seafarers themselves. The emphasis is on co-operation and communication between those involved and in ensuring that no discriminatory or retaliatory measures are taken against seafarers because of their participation in investigations. All necessary measures should be taken to ensure the fair treatment of seafarers.

International Convention on Civil Liability for Oil Pollution Damage as amended ('CLC') and International Convention Establishing the International Oil Pollution Fund as amended ('IOPC Fund'), as well as Supplementary Fund 2003

The CLC/IOPC system covers pollution damage occurred in consequence of carriage of oil (persistent hydrocarbon mineral oil) by the vessel. In particular, this damage is defined as: "loss or damage caused outside the ship by contamination resulting from the escape or discharge of oil from the ship, wherever such escape or discharge may occur."

Anyone who has suffered prejudice due to damage caused by escape or discharge of oil from the vessel may claim compensation from the shipowner. The compensation should cover:

- any quantifiable damage, including damage to environment,
- loss of profit,
- preventive measures which are defined as "any reasonable measures taken by (...) after an incident has occurred to prevent or minimise pollution damage."

Compensation for "impairment of environment" other than loss of profit should be "limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken".

The Convention applies to the damage caused:

- in the territory of the State Party to CLC,
- its exclusive economic zone,
- with regards to preventive measures, it applies to them wherever they were taken.

It is a two-tier system of liability. The shipowner is responsible, on the basis of strict liability but with certain exceptions including acts of war, force majeure, fault entirely attributed to a third party and wrongful act of a governmental authority responsible for the maintenance of navigational aids, up to a certain limit depending on the tonnage of his ship. In case of a ship carrying more than 2,000 tons

of oil in bulk as cargo he has to maintain insurance to cover his potential liability (see more in the chapter on “Insurance and Liability”).

The IOPC Funds of 1971 and 1992, created from annual contributions of oil importers by sea, provide compensation above the limit of shipowners’ liability or if no liability of the shipowner arises (e.g. act of war or else if the shipowner is financially incapable to meet all obligations. The 1992 IOPC Fund provides compensation up 203 million SDR (~ € 227 million). In 2003 the IMO adopted the Supplementary Fund Protocol which increased available compensation to 750 million SDR (~ € 840 million).

International Convention on Civil Liability for Bunker Oil Pollution Damage (Bunker Oil Convention 2001)

Bunker Oil Convention applies to pollution damage resulting from the escape or discharge of bunker oil from the ship. In similarity to CLC Convention, the compensation covers:

- any quantifiable damage, including damage to environment,
- loss of profit,
- preventive measures which are defined in the same way as in the CLC.

Compensation for “impairment of environment” other than loss of profit should be “limited to costs of reasonable measures of reinstatement actually undertaken or to be undertaken”.

Territorially, it applies to:

- pollution damage in the territory and the territorial sea of the State Party to the Convention,
- its exclusive economic zone (or an equivalent zone),
- to measures taken to prevent or minimise such damage wherever taken.

The Convention is based on the rule of strict liability of the registered owner of vessel. He is liable regardless of fault with only limited exceptions (similar to CLC above), but his liability is limited up to a ceiling calculated in accordance with the Convention on Limitation of Liability for Maritime Claims 1976 or 1996, as amended (in the text binding in a relevant state). Unlike CLC, there is no fund to provide for additional compensation. In relation to a ship with a tonnage greater than 1000 GT the owner obliged to maintain insurance.

International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention 1996 and HNS Protocol 2010)

In May 1996 the IMO adopted the **HNS Convention** and in April 2010 it adopted an amending Protocol. None has entered into force yet.

The Convention creates a system of strict liability of the shipowner, similar to the CLC (see above) with an additional exception introduced for any failure of the shipper or other person to provide information on the shipped hazardous and noxious substances. HNS damage includes:

- loss of life or personal injury on board or outside the ship carrying the hazardous and noxious substances caused by those substances,
- loss of or damage to property outside the ship,
- loss or damage by contamination of the environment,
- the costs of preventive measures and further loss or damage caused by them.

Claims in respect of death or personal injury have priority over other claims.

It applies to:

- any damage occurred in the territory and territorial sea of the State Party,
- damage by contamination of the environment occurred in the exclusive economic zone or equivalent of the State Party
- preventive measures wherever they were taken, as well as
- damage, other than damage by contamination of the environment, caused outside the territory of any State, if this damage has been caused by a substance carried on board a ship registered in a State Party.

The shipowner is liable up to certain limit calculated on the basis of the tonnage of the ship. The maximum amount available under this first tier is 100 million SDR (now around 112 million euro). He is required to maintain insurance or other financial security for this purpose.

In cases where full compensation is not available under the first tier, a compensation fund (HNS Fund) will provide compensation. The total maximum compensation is of 250 million SDR (~280 million euro) per incident. The fund will be financed by receivers of HNS substances transported by sea in the Member States in excess of certain thresholds.

The Nairobi International Convention on the Removal of Wrecks 2007

Wreck Removal Convention was adopted in 2007 and has entered into force in April 2015.

The Convention holds the owner liable for the cost of locating, marking and removing the wreck. The liability is excluded in the event of an act of war or force majeure, as well as if the maritime casualty was intentionally caused entirely by a third party.

However, the owner can limit liability pursuant to any applicable limitation regime – it will mostly be the International Convention on Limitation of Liability for Maritime Claims, although a State Party may, when ratifying LLMC, specifically exclude the right to limit in respect of wrecks.

The Convention requires the owner of a ship of 300 GT or more to maintain insurance or another form of financial security to cover liability under the Convention.

LLMC Convention – global limitation of liability

The **Convention on Limitation of Liability for Maritime Claims** provides for the right of shipowners (charterers, managers, operators, etc.) and salvors to limit their liability for a variety of maritime claims related to the operation of a ship (e.g. in respect of loss of life or personal injury and loss or damage to property, including damage occurred during salvage operations).

The limitation amount is calculated on the basis of the tonnage of the ship in question according to the method described in the Convention.

The Convention was first adopted in 1976, then the limits of liability were increased in 1996 and again increased in 2012 – the latter have entered into force in June 2015.

The only claims excluded from under the limits of LLMC are those regulated by special regimes, CLC and HNS, which define their own liability limits or wreck removal claims if the State signatory to LLMC specifically excluded them. Other claims, such as bunker oil pollution claims and any other claims as defined by national laws are subject to LLMC limits.

The right to the limitation of liability is considered very difficult to 'break' since its Article 4 provides only that "a person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result".

It is important to note that LLMC does not provide for rules of liability, it only provides for financial limitation of liability once the liability itself has been ascertained according to applicable rules.

European Union Rules

Directive 2002/59/EC on Community vessel traffic monitoring and information system as amended ('VTMIS Directive')

Article 19 and Annex IV: establish the obligations of the parties concerned with an incident at sea threatening to safety of shipping or persons, or the protection of the environment. As far as the coastal State is concerned, the Directive contains in Annex IV a non-exhaustive list of measures to be considered by the Member States in the event of an incident. The shipowner, the operator, the master and the charterer are strictly held to cooperate with the national competent authorities in order to minimise the consequences of such incidents. Finally, the master of the ship involved in an incident at sea bears additional responsibilities of notification and cooperation with the competent authorities in case of an assignment of a place of refuge.

Article 20 requires Member States to designate one or more competent authorities to take independent decisions concerning the accommodation of ships in need of assistance. The authority

(or authorities) should have sufficient expertise and power to make a variety of decisions, among others to restrict the movement of the ship or direct it to follow a particular course, to give a notice to the master to end a particular threat to environment or maritime safety, to send an evaluation team on board of the ship or direct a ship to a place of refuge.

Article 20a requires Member States to draw up plans for the accommodation of ships in order to respond to threats presented by ships in need of assistance in the waters under their jurisdiction, including, where applicable, threats to human life and the environment. The plans should contain at least: the identity of the authority responsible for receiving and handling alerts (name and contact), the identity of the authority responsible for decisions on acceptance or refusal of a ship to a place of refuge, information on the coastline of Member States and all elements facilitating a prior assessment and rapid decision regarding the place of refuge, the assessment procedures for acceptance or refusal of a ship, relevant resources and installations, procedures for international coordination and decision-making and financial guarantee and liability procedures. Member States shall communicate on request the relevant information concerning plans to neighbouring Member States.

Article 20b states that on the basis of the national plan, the competent authority will decide on the acceptance of a ship in a place of refuge following a prior assessment of the situation. The ship will be admitted to a place of refuge if such an accommodation is the best course of action for the purposes of the protection of human life or the environment.

Article 20c notes the relevance of insurance or other financial security in accordance with Directive 2009/20/EC for the ship in need of assistance, which Member States may require to see evidence of. However, the absence of such certificate does not exonerate a Member State from the preliminary assessment of the situation and is not a sufficient reason to refuse to accommodate a ship in a place of refuge.

Article 21: Competent authorities of Member States involved in the management of an incident at sea shall broadcast relevant information to the parties concerned, and shall inform and exchange information with any other Member States with a potential interest in the case at hand.

Article 20d: Member States shall also cooperate, among themselves and with the European Commission in drawing up, if appropriate, concerted plans to accommodate ships in need of assistance.

Directive 2009/20/EC on the insurance of shipowners for maritime claims ('insurance Directive')

All ships above 300 GT flagged in the EU Member States, as well as any other ships of the same tonnage flying a non-EU flag when they enter a port under the EU Member State's jurisdiction, have to have insurance adequately covering potential maritime claims subject to limitation under the LLMC. The amount of the insurance is calculated according to the rules in the LLMC 1996. Such insurance means indemnity insurance of the type currently provided by the International Group of P

& I Clubs and other effective forms of financial security and insurance (including proved self-insurance).

Directive 2004/35/EC on environmental liability with regard to the prevention and remedying of environmental damage ('ELD')

The Directive introduces rules relating to pollution of the environment in general. Those rules can also be applied to pollution of marine environment in particular it provides that an operator of an “occupational activity” (which includes also transport by sea of hazardous materials) is obliged, in case of environmental damage or damage to protected species and natural habitats, as well as in case of an imminent threat of such damage, to undertake preventive and remedial measures.

The rules do not apply to environmental damage arising from an incident in respect of which liability or compensation falls within the scope of any of the international liability conventions, namely CLC and HNS. This means in practice that a competent authority should first consider the applicability of the above-listed international conventions before examining the relevant steps to take in accordance with national law transposing the ELD.

According to Articles 5 and 6 of the ELD preventive and remedial measures have to be taken in cooperation with a competent authority (different to the one established in accordance with Article 20 of the VTMIS) designated by the Member State for this purpose. The competent authority may require the operator i.a. to provide information, follow instructions, and undertake specific measures to address the environmental consequences of the incident at sea.

The operator shall bear the costs for the preventive and remedial actions and shall be responsible for the costs if such measures were taken by the competent authority with the exceptions of the situations when the damage was caused by a third party and occurred despite the fact that appropriate safety measures were in place or when it resulted from compliance with a compulsory order or instruction emanating from a public authority. Even if the Directive provides for the strict liability of the operator, the Member States may allow the operator not to bear the cost of remedial actions when he was not at fault or negligent and the environmental damage was caused by an emission or event expressly authorised under applicable national law or by an activity which was not considered likely to cause environmental damage.

The Directive is without prejudice to the right of the operator to limit his liability in accordance with national legislation implementing LLMC, therefore, even if the shipowner is liable for the costs of preventive and remedial measures, his financial liability will in most circumstances be limited.

It is to be noted that the provisions of the Directive are directed to the Member States. They do not provide for any compensation rules for third parties, they only concern the liability of the operator towards the Member State for the costs incurred. They may potentially be applied to a place of refuge situation, in combination with the rules on limitation of liability. It is possible that in a case involving a ship in need of assistance both competent authorities (under the VTMIS and the ELD) will

be concerned. However, the allocation of liability toward the State can only follow the assessment and decision on the accommodation of the ship in need of assistance.

Appendix I

--- Click to come back to PoR Quick Reference ---

List of Websites/Contacts

www.iacs.org.uk	International Association of Classification Societies
www.ics-shipping.org	The International Chamber of Shipping
www.igpandi.org	International Group of P&I Clubs
www.imo.org	International Maritime Organisation
www.marine-salvage.com	The International Salvage Union
www.iumi.com	International Union of Marine Insurance
www.equasis.org	Equasis
www.marine-salvage.com	International Salvage Union
www.itopf.com	The International Tanker Owners Pollution Federation
[to be added]	

Appendix J

Liability and Compensation

It is important to note that a ship will remain on risk throughout the period covered by the maritime casualty and in the event of an incident where a ship is in need of assistance and requests a place of refuge, the following three types of marine insurance cover will normally apply:

Hull & Machinery (H&M) insurance, Cargo insurance and Protection & Indemnity (P&I) insurance

The H&M insurance is the vessel's property insurance and covers: damage to the vessel itself, its machinery, the ship's proportion of salvage costs and the vessel's contribution to general average. Salvage costs are covered regardless of whether the Master remains on board or not during the operations.

Cargo insurance is also property insurance and covers all damages to the cargoes loaded on board and the cargoes' proportional share of general average, normally based on the York-Antwerp-Rules. Average bonds and guarantees are signed by the cargo owner and their insurers.

The P&I insurance covers the shipowner's liability to third parties such as personal injury to passengers and seafarers, damage to third party property, wreck removal costs, counter-pollution measures and clean-up operations, cargo damage etc. Hence, the P&I insurance is the most relevant one for the purposes of a place of refuge situation.

It is important to note that the ship's H&M, Cargo and P&I insurance covers are not prejudiced by a ship seeking assistance or a safe place of refuge whether that is in a sheltered haven, port or terminal.

Potential liabilities & related costs

Accommodation of a ship in a place of refuge may lead to the following types of damage or related costs, which are covered by a shipowner's insurance cover arrangements:

- physical damage to the environment,
- economic damage,
- personal injury or death,
- damage to property,
- wreck removal,
- clean-up costs,
- costs resulting from unloading, unpacking, storing, transhipping, etc. of cargo.

Insurance Cover

Insurance covering claims subject to limitation under the International Convention on the Limitation of Liability for Maritime Claims (see [LLMC Convention – global limitation of liability](#)) is mandatory in the EU for all ships over 300gt, when these are entering EU ports, or –in some cases – when these operate in the territorial waters of a Member State, or – in any event – when these are registered in a Member State.

Mandatory insurance is also a requirement under a number of IMO international conventions (see Appendix H) for the shipowner's liabilities for: oil, including bunker oil, as well as wreck removal and any activities undertaken to render the wreck - or any parts thereof - harmless. Liability in respect of pollution prevention, damage and clean-up of HNS is also a covered risk for P&I insurance providers (see [International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea \(HNS Convention 1996 and HNS Protocol 2010\)](#)).

Once cover arrangements for the ship concerned are verified, the CA will have access to the identified insurance provider who will respond under the relevant IMO convention/s or national legislation. International Group Clubs may also provide a Letter of Undertaking following consultation with the affected State.

---- Click to come back to PoR Quick Reference ----

List of Acronyms

---- [Click to come back to PoR Quick Reference](#) ----

CA	Competent Authority
CMS	Co-ordinating Member State
CS	Classification Society
DPA	Designated Person Ashore
CSN	CleanSeaNet
EEZ	Economic Exclusion Zone
EMSA	European Maritime Safety Agency
ERS	Emergency Response Service
GESAMP	Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection
H&M	Hull and Machinery
IACS	International Association of Classification Societies
IBC	International Code for the Construction and Equipment of Ships carrying Dangerous Chemicals in Bulk
ICS	International Chamber of Shipping
IGP&I	International Group Protection & Indemnity
IMDG	International Maritime Dangerous Goods code
ISU	International Salvage Union
IOPC Funds	International Oil Pollution Compensation Funds
ITOPF	International Tanker Owners Pollution Federation Limited
MAR-ICE	Marine – Intervention in Chemical Emergencies Network
MAR-CIS	Marine Chemical Information Sheets
MAS	Maritime Assistance Service
MRCC	Maritime Rescue Co-ordination Centre
MSS	Maritime Support Services
NCP	National Contingency Plan
QDM	Quick Decision Methodology
SERS	Ship Emergency Response Service
SITREP	Situation Report
SMS	Supporting Member State
SRR	Search and Rescue Region
SSN	The Union Maritime Information and Exchange System, SafeSeaNet
THETIS	EU Port State Control Inspection Regime database
VTS	Vessel Traffic Service
VTMIS	Vessel Traffic Monitoring and Information System (2002/59/EC)

List of Definitions²⁶

--- [Click to come back to PoR Quick Reference](#) ---

Flag State	"Member State whose flag the ship is flying" according to Directive 2009/21/EC on compliance with flag State requirements
Charterer	Bareboat charterer
Company	According to the ISM Code, point 1.1.2 it "means the Owner of the ship or any other organization or person such as the Manager, or the Bareboat Charterer, who has assumed the responsibility for operation of the ship from the Shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the [ISM] Code."
Coordination	The organization of the different elements of a complex body or activity so as to enable them to work together effectively.
MAR-ICE	The network established by EMSA in close cooperation with the French institution Research and Experimentation on Accidental Water Pollution (Cedre) and the European Chemical Industry Council (Cefic).
MAR-CIS	The datasheets provided to requesting maritime administrations in case of emergencies through MAR-ICE.
SafeSeaNet	The Union Maritime Information and Exchange System
Salvor	The salvor is the party providing services to a vessel in need of assistance on a volunteer basis and who is responsible for the conduct of those services.
Salvage Operation	Means any act or activity undertaken to assist a vessel or any other property in danger in navigable waters or in any other waters whatsoever

²⁶ For the purposes of these guidelines

INDEX

Background	3
POR GUIDELINES – FLOW CHART (QUICK REFERENCE)	5
Chapter 1	10
Roles and Responsibilities of Key Players in relation to a request for a Place of Refuge	10
1.1. Responsibilities of Member States.....	10
1.1.1. Member State’s Competent Authority.....	10
1.1.2. Co-ordinating and Supporting Member States	11
1.1.3. Responsibilities of the Co-ordinating Member State (CMS)	11
1.1.4. Responsibilities of the Supporting Member States (SMS)	12
1.1.5. Role of Maritime Assistance Service and Maritime Rescue Co-ordination Centre	12
1.2. Responsibilities of other involved parties	13
1.2.1. The master.....	13
1.2.2. Persons responsible for the vessel at the time of the incident.....	14
1.2.3. The Flag State	15
1.2.4. The Classification Society	15
1.2.5. The Salvor	15
1.2.6. Port & Harbour Authorities	16
1.2.7. Insurers	16
Chapter 2	17
Initial Incident Reporting, Monitoring & Information gathering	17
2.1. Initial Incident Reporting.....	17
2.2. Monitoring the situation	18
2.2.1. Obtaining information relative to the vessel and cargo:	18
2.2.2. SafeSeaNet, information system relative to the event:	18
2.2.3. Relative to dangerous, polluting and toxic goods	19
2.2.4. Integrated Maritime Services	20

2.3.	Information Gathering.....	20
2.3.1.	Information sources and accessibility	21
2.3.2.	Contacts.....	21
2.3.3.	Information on insurance coverage	21
2.3.4.	Actions in case of absence of proof of insurance.....	23
Chapter 3	.....	24
Places of Refuge Co-ordination	.....	24
3.1.	Incidents within jurisdiction of a Member State.....	24
3.1.1.	Place of refuge request - following SAR operation	24
3.1.2.	Place of refuge request – no initial SAR operation	24
3.2.	Incidents outside jurisdiction of any one Member State.....	25
3.3.	Obligations on Co-ordinating Authority and Neighbouring Member States	25
3.4.	Transfer of co-ordination	25
Chapter 4	.....	26
Requesting a Place of Refuge	.....	26
4.1.	Process.....	26
4.1.1.	Appraisal of the situation	26
4.1.2.	Identification of Hazards and Assessment of Associated Risks.....	26
4.1.3.	Identification of Assistance / Services Required in place of refuge	26
4.1.4.	Transmission of request to the Member State and cooperation.....	26
4.2.	Formal Request for a Place of Refuge	27
4.3.	Member States’ Plans for allocating a Place of Refuge.....	27
Chapter 5	.....	28
Risk Assessment & Inspection	.....	28
5.1.	EU Decision Methodology	28
5.2.	Inspection / Expert Analysis	29
Chapter 6	.....	30
Decision Making & Outcomes	.....	30

6.1.	Competent Authority Final Decision	30
6.1.1.	Decision to grant a place of refuge	30
6.1.2.	Decision not to grant a place of refuge	30
6.1.3.	Subsequent Request to another MS to grant a POR	31
6.1.4.	Passage Plan & Monitoring	31
Chapter 7	.....	32
Financial Security	.....	32
7.1.	Operational action points.....	32
Chapter 8	.....	33
Media and Information Handling	.....	33
8.1.	Media and Information Handling	33
8.2.	Key Principles.....	33
8.3.	Key interest groups.....	33
8.4.	Key actions for persons handling incident	33
Chapter 9	.....	34
Lessons Learned	.....	34
9.1.	National & Regional De-briefs	34
9.2.	Places of Refuge CA Co-operation Group De-brief.....	34
9.3.	Exercises & Workshops	34
Appendix A	.....	36
Appendix B	.....	37
Appendix C	.....	38
Appendix D	.....	40
Appendix E	.....	45
Appendix F	.....	46
Appendix G	.....	49
Appendix H	.....	52
Appendix I	62

Appendix J	63
List of Acronyms.....	65
List of Definitions	66
INDEX.....	67



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Agenda item 17

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**Adopted on 5 December 2003
(Agenda item 17)**

**GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE**

THE ASSEMBLY,

RECALLING Article 15(j) of the Convention on the International Maritime Organization concerning the functions of the Assembly in relation to regulations and guidelines concerning maritime safety and the prevention and control of marine pollution from ships,

RECALLING ALSO the obligations and procedures for the master to come to the assistance of persons in distress at sea, established by regulation V/33 of the International Convention for the Safety of Life at Sea, 1974, as amended,

RECALLING FURTHER that the International Convention on Maritime Search and Rescue, 1979, as amended, establishes a comprehensive system for the rescue of persons in distress at sea which does not address the issue of ships in need of assistance,

CONSCIOUS OF THE POSSIBILITY that ships at sea may find themselves in need of assistance relating to the safety of life and the protection of the marine environment,

RECOGNIZING the importance of and need for providing guidance for the masters and/or salvors of ships in need of assistance,

RECOGNIZING ALSO the need to balance both the prerogative of a ship in need of assistance to seek a place of refuge and the prerogative of a coastal State to protect its coastline,

RECOGNIZING FURTHER that the provision of a common framework to assist coastal States to determine places of refuge for ships in need of assistance and respond effectively to requests for such places of refuge would materially enhance maritime safety and the protection of the marine environment,

HAVING CONSIDERED the recommendations made by the Maritime Safety Committee at its seventy-sixth and seventy-seventh sessions, by the Marine Environment Protection Committee at its forty-eighth session, by the Legal Committee at its eighty-seventh session and by the Sub-Committee on Safety of Navigation at its forty-ninth session,

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1. ADOPTS the Guidelines on places of refuge for ships in need of assistance, the text of which is set out in the annex to the present resolution;
2. INVITES Governments to take these Guidelines into account when determining and responding to requests for places of refuge from ships in need of assistance;
3. REQUESTS the Maritime Safety Committee, the Marine Environment Protection Committee and the Legal Committee to keep the annexed Guidelines under review and amend them as appropriate;
4. REQUESTS the Legal Committee to consider, as a matter of priority, the said Guidelines from its own perspective, including the provision of financial security to cover coastal State expenses and/or compensation issues, and to take action as it may deem appropriate.

ANNEX

**GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE**

Table of Contents

1 General

- 1.1 to 1.7 Introduction**
- 1.8 to 1.11 Background**
- 1.12 to 1.17 Purpose of the guidelines**
- 1.18 to 20 Definitions**

2 Guidelines for action required of masters and or salvors in need of places of refuge

- 2.1 Appraisal of the situation**
- 2.2 Identification of hazards and assessment of associated risks**
- 2.3 Identification of required actions**
- 2.4 Contacting the authority of the coastal State**
- 2.5 to 2.6 Establishment of responsibilities and communications with all parties involved**
- 2.7 to 2.8 Response actions**
- 2.9 Reporting procedures**

3 Guidelines for actions expected of coastal States

- 3.4 to 3.8 Assessment of places of refuge**
- 3.9 Event-specific assessment**
- 3.10 to 3.11 Expert analysis**
- 3.12 to 3.14 Decision-making process for the use of a place of refuge**

Appendix 1 Applicable international conventions

Appendix 2 Guidelines for the evaluation of risks associated with the provision of places of refuge

1 General

Introduction

Objectives of providing a place of refuge

1.1 Where the safety of life is involved, the provisions of the SAR Convention should be followed. Where a ship is in need of assistance but safety of life is not involved, these guidelines should be followed.

1.2 The issue of “places of refuge” is not a purely theoretical or doctrinal debate but the solution to a practical problem: What to do when a ship finds itself in serious difficulty or in need of assistance without, however, presenting a risk to the safety of life of persons involved. Should the ship be brought into shelter near the coast or into a port or, conversely, should it be taken out to sea?

1.3 When a ship has suffered an incident, the best way of preventing damage or pollution from its progressive deterioration would be to lighten its cargo and bunkers; and to repair the damage. Such an operation is best carried out in a place of refuge.

1.4 However, to bring such a ship into a place of refuge near a coast may endanger the coastal State, both economically and from the environmental point of view, and local authorities and populations may strongly object to the operation.

1.5 While coastal States may be reluctant to accept damaged or disabled ships into their area of responsibility due primarily to the potential for environmental damage, in fact it is rarely possible to deal satisfactorily and effectively with a marine casualty in open sea conditions.

1.6 In some circumstances, the longer a damaged ship is forced to remain at the mercy of the elements in the open sea, the greater the risk of the vessel’s condition deteriorating or the sea, weather or environmental situation changing and thereby becoming a greater potential hazard.

1.7 Therefore, granting access to a place of refuge could involve a political decision which can only be taken on a case-by-case basis with due consideration given to the balance between the advantage for the affected ship and the environment resulting from bringing the ship into a place of refuge and the risk to the environment resulting from that ship being near the coast.

Background

1.8 There are circumstances under which it may be desirable to carry out a cargo transfer operation or other operations to prevent or minimize damage or pollution. For this purpose, it will usually be advantageous to take the ship to a place of refuge.

1.9 Taking such a ship to a place of refuge would also have the advantage of limiting the extent of coastline threatened by damage or pollution, but the specific area chosen may be more severely threatened. Consideration must also be given to the possibility of taking the affected ship to a port or terminal where the transfer or repair work could be done relatively easily. For this reason the decision on the choice and use of a place of refuge will have to be carefully considered.

1.10 The use of places of refuge could encounter local opposition and involve political decisions. The coastal States should recognize that a properly argued technical case, based on a clear description of the state of the casualty, would be of great value in any negotiations which may take place.

1.11 At the international level, the Conventions listed in Appendix 1, as may be amended, constitute, *inter alia*, the legal context within which coastal States and ships act in the envisaged circumstances.

Purpose of the Guidelines

1.12 The purpose of these Guidelines is to provide Member Governments, shipmasters, companies¹ (particularly in connection with the ISM Code and procedures arising therefrom), and salvors with a framework enabling them to respond effectively and in such a way that, in any given situation, the efforts of the shipmaster and shipping company concerned and the efforts of the government authorities involved are complementary. In particular, an attempt has been made to arrive at a common framework for assessing the situation of ships in need of assistance.

1.13 **These Guidelines do not address the issue of operations for the rescue of persons at sea**, inasmuch as the practical difficulties that have given rise to the examination of the issue of places of refuge relate to problems other than those of rescue. Two situations can arise:

- the ship, according to the master's assessment, is in need of assistance but not in a distress situation (about to sink, fire developing, etc.) that requires the evacuation of those on board; or
- those on board have already been rescued, with the possible exception of those who have stayed on board or have been placed on board in an attempt to deal with the situation of the ship.

1.14 **If, however, in an evolving situation, the persons on board find themselves in distress, the rules applicable to rescue operations under the SAR Convention, the IAMSAR Manual and documents arising therefrom have priority over the present Guidelines (and procedures arising herefrom).**

1.15 In any case the competent MRCC should be informed about any situation which may develop into a SAR incident.

1.16 Even though a "rescue" operation, as defined in the International Convention on Maritime Search and Rescue (SAR) is not the case, the safety of persons must nevertheless be constantly borne in mind in the application of these Guidelines, particularly in two respects:

- if the ship poses a risk (explosion, serious pollution, etc.) to the life of persons in the vicinity (crews of salvage vessels, port workers, inhabitants of the coastal area, etc.);
- if persons voluntarily stay (master, etc.) or go (fire-fighters and other experts, personnel of marine salvage or towage companies, etc.) on board to attempt to overcome the difficulties experienced by the ship.

¹ As defined in the ISM Code.

1.17 These Guidelines do not address the issue of liability and compensation for damage resulting from a decision to grant or deny a ship a place of refuge.

Definitions

1.18 **Ship in need of assistance** means a ship in a situation, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an environmental or navigational hazard.

1.19 **Place of refuge** means a place where a ship in need of assistance can take action to enable it to stabilize its condition and reduce the hazards to navigation, and to protect human life and the environment.

1.20 **MAS** means a maritime assistance service, as defined in resolution A.950(23), responsible for receiving reports in the event of incidents and serving as the point of contact between the shipmaster and the authorities of the coastal State in the event of an incident.

2 GUIDELINES FOR ACTION REQUIRED OF MASTERS AND/OR SALVORS OF SHIPS IN NEED OF A PLACE OF REFUGE

Appraisal of the situation

2.1 The master should, where necessary with the assistance of the company and/or the salvor, identify the reasons for his/her ship's need of assistance. (Refer to paragraph 1 of Appendix 2.)

Identification of hazards and assessment of associated risks

2.2 Having made the appraisal referred to in paragraph 2.1 above, the master, where necessary with the assistance of the company and/or the salvor, should estimate the consequences of the potential casualty, in the following hypothetical situations, taking into account both the casualty assessment factors in their possession and also the cargo and bunkers on board:

- if the ship remains in the same position;
- if the ship continues on its voyage;
- if the ship reaches a place of refuge; or
- if the ship is taken out to sea.

Identification of the required actions

2.3 The master and/or the salvor should identify the assistance they require from the coastal State in order to overcome the inherent danger of the situation. (Refer to paragraph 3 of Appendix 2.)

Contacting the authority of the coastal State

2.4 The master and/or the salvor should make contact with the coastal State in order to transmit to it the particulars referred to in paragraphs 2.1 to 2.3 above. They must in any case transmit to the coastal State the particulars required under the international conventions in force. Such contact should be made through the coastal State's Maritime Assistance Service (MAS), as referred to in resolution A.950(23).

Establishment of responsibilities and communications with all parties involved

2.5 The master and/or the salvor should notify the MAS of the actions that are intended to be taken and within what period of time.

2.6 The MAS should notify the master and/or the salvor of the facilities that it can make available with a view to assistance or admittance of the ship to a place of refuge, if required.

Response actions

2.7 Subject, where necessary, to the coastal State's prior consent, the shipmaster and the shipping company concerned should take any necessary response actions, such as signing a salvage or towage agreement or the provision of any other service for the purpose of dealing with the ship's situation.

2.8 The master, the company and, where applicable, the salvor of the ship should comply with the practical requirements resulting from the coastal State's decision-making process referred to in paragraphs 3.12 to 3.14.

Reporting procedures

2.9 The reporting procedures should be in accordance with the procedures laid down in the safety management system of the ship concerned under the ISM Code or resolution A.852(20) on Guidelines for a structure of an integrated system of contingency planning for shipboard emergencies, as appropriate.

3 GUIDELINES FOR ACTIONS EXPECTED OF COASTAL STATES

3.1 Under international law, a coastal State may require the ship's master or company to take appropriate action within a prescribed time limit with a view to halting a threat of danger. In cases of failure or urgency, the coastal State can exercise its authority in taking responsive action appropriate to the threat.

3.2 It is therefore important that coastal States establish procedures to address these issues, even if no established damage and/or pollution has occurred.

3.3 Coastal States should, in particular, establish a Maritime Assistance Service (MAS).²

Assessment of places of refuge

Generic assessment and preparatory measures

3.4 It is recommended that coastal States endeavour to establish procedures consistent with these Guidelines by which to receive and act on requests for assistance with a view to authorizing, where appropriate, the use of a suitable place of refuge.

3.5 The maritime authorities (and, where necessary, the port authorities) should, for each place of refuge, make an objective analysis of the advantages and disadvantages of allowing a ship in need of assistance to proceed to a place of refuge, taking into consideration the analysis factors listed in paragraph 2 of Appendix 2.

² Unless neighbouring States make the necessary arrangements to establish a joint service.

3.6 The aforementioned analysis, which should take the form of contingency plans, is to be in preparation for the analysis provided for below when an incident occurs.

3.7 The maritime authorities, port authorities, authorities responsible for shoreside safety and generally all governmental authorities concerned should ensure that an appropriate system for information-sharing exists and should establish communications and alert procedures (identification of contact persons, telephone numbers, etc.), as appropriate.

3.8 The aforementioned authorities should plan the modalities for a joint assessment of the situation.

Event-specific assessment

Analysis factors

3.9 This analysis should include the following points:

- seaworthiness of the ship concerned, in particular buoyancy, stability, availability of means of propulsion and power generation, docking ability, etc.;
- nature and condition of cargo, stores, bunkers, in particular hazardous goods;
- distance and estimated transit time to a place of refuge;
- whether the master is still on board;
- the number of other crew and/or salvors and other persons on board and an assessment of human factors, including fatigue;
- the legal authority of the country concerned to require action of the ship in need of assistance;
- whether the ship concerned is insured or not insured;
- if the ship is insured, identification of the insurer, and the limits of liability available;
- agreement by the master and company of the ship to the proposals of the coastal State/salvor to proceed or be brought to a place of refuge;
- provisions of the financial security required;
- commercial salvage contracts already concluded by the master or company of the ship;
- information on the intention of the master and/or salvor;
- designation of a representative of the company at the coastal State concerned;
- risk evaluation factors identified in Appendix 2; and
- any measures already taken.

Expert analysis

3.10 An inspection team designated by the coastal State should board the ship, when appropriate and if time allows, for the purpose of gathering evaluation data. The team should be composed of persons with expertise appropriate to the situation.

3.11 The analysis should include a comparison between the risks involved if the ship remains at sea and the risks that it would pose to the place of refuge and its environment. Such comparison should cover each of the following points:

- safeguarding of human life at sea;
- safety of persons at the place of refuge and its industrial and urban environment (risk of fire or explosion, toxic risk, etc.);
- risk of pollution;
- if the place of refuge is a port, risk of disruption to the port's operation (channels, docks, equipment, other installations);
- evaluation of the consequences if a request for place of refuge is refused, including the possible effect on neighbouring States; and
- due regard should be given, when drawing the analysis, to the preservation of the hull, machinery and cargo of the ship in need of assistance.

After the final analysis has been completed, the maritime authority should ensure that the other authorities concerned are appropriately informed.

Decision-making process for the use of a place of refuge

3.12 When permission to access a place of refuge is requested, there is no obligation for the coastal State to grant it, but the coastal State should weigh all the factors and risks in a balanced manner and give shelter whenever reasonably possible.

3.13 In the light of the outcome of the assessment provided for above, the coastal State should decide to allow or refuse admittance, coupled, where necessary, with practical requirements.

3.14 The action of the coastal State does not prevent the company or its representative from being called upon to take steps with a view to arranging for the ship in need of assistance to proceed to a place of refuge. As a general rule, if the place of refuge is a port, a security in favour of the port will be required to guarantee payment of all expenses which may be incurred in connection with its operations, such as: measures to safeguard the operation, port dues, pilotage, towage, mooring operations, miscellaneous expenses, etc.

APPENDIX 1

APPLICABLE INTERNATIONAL CONVENTIONS

At the international level, the following Conventions and Protocols are in force and constitute, *inter alia*, the legal context within which coastal States and ships act in the envisaged circumstances³:

- United Nations Convention on the Law of the Sea (UNCLOS), in particular article 221 thereof;⁴
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties (the Intervention Convention), 1969, as amended;
- Protocol relating to Intervention on the High Seas in Cases of Pollution by substances other than Oil, 1973;
- International Convention for the Safety of Life at Sea, 1974 (SOLAS 1974), as amended, in particular chapter V thereof;
- International Convention on Salvage, 1989 (the Salvage Convention);⁵
- International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990 (the OPRC Convention);
- International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78);
- International Convention on Maritime Search and Rescue, 1979 (SAR 1979), as amended.
- Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972

³ It is noted that there is at present no international requirement for a State to provide a place of refuge for vessels in need of assistance.

⁴ “1. Nothing in this Part shall prejudice the right of States, pursuant to international law, both customary and conventional, to take and enforce measures beyond the territorial sea proportionate to the actual or threatened damage to protect their coastline or related interests, including fishing, from pollution or threat of pollution following upon a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences.

2. For the purposes of this article, “maritime casualty” means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to a vessel or cargo.”

⁵ Parties to the International Convention on Salvage, 1989 (Salvage 1989), are obliged under article 11 of the Convention when considering a request for a place of refuge, to take into account the need for co-operation between salvors, other interested parties and public authorities to ensure the efficient and successful performance of salvage operations. Article 11 of the Salvage Convention states:

“A State Party shall, whenever regulating or deciding upon matters relating to salvage operations such as admittance to ports of vessels in distress or the provision of facilities to salvors, take into account the need for co-operation between salvors, other interested parties and public authorities in order to ensure the efficient and successful performance of salvage operations for the purpose of saving life or property in danger as well as preventing damage to the environment in general.”

- Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, 1971
- Convention on Limitation of Liability for Maritime Claims (LLMC), 1976
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969
- International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1992.

APPENDIX 2

**GUIDELINES FOR THE EVALUATION OF RISKS ASSOCIATED
WITH THE PROVISION OF PLACES OF REFUGE**

When conducting the analysis described in paragraphs 3.4 to 3.8, in addition to the factors described in paragraph 3.9, the following should be considered.

1 Identification of events, such as:

- fire
- explosion
- damage to the ship, including mechanical and/or structural failure
- collision
- pollution
- impaired vessel stability
- grounding.

2 Assessment of risks related to the identified event taking into account:

.1 Environmental and social factors, such as:

- safety of those on board
- threat to public safety
 - What is the nearest distance to populated areas?
- pollution caused by the ship
- designated environmental areas
 - Are the place of refuge and its approaches located in sensitive areas such as areas of high ecological value which might be affected by possible pollution?
 - Is there, on environmental grounds, a better choice of place of refuge close by?
- sensitive habitats and species
- fisheries
 - Are there any offshore and fishing or shellfishing activities in the transit area or in the approaches to the place of refuge or vicinity which can be endangered by the incoming ship in need of assistance?
- economic/industrial facilities
 - What is the nearest distance to industrial areas?
- amenity resources and tourism
- facilities available
 - Are there any specialist vessels and aircraft and other necessary means for carrying out the required operations or for providing necessary assistance?
 - Are there transfer facilities, such as pumps, hoses, barges, pontoons?
 - Are there reception facilities for harmful and dangerous cargoes?
 - Are there repair facilities, such as dockyards, workshops, cranes?

.2 Natural conditions, such as:

Prevailing winds in the area.

Is the place of refuge safely guarded against heavy winds and rough seas?

Tides and tidal currents.

- weather and sea conditions
Local meteorological statistics and number of days of inoperability or inaccessibility of the place of refuge.
- bathymetry
Minimum and maximum water depths in the place of refuge and its approaches.
The maximum draught of the ship to be admitted. Information on the condition of the bottom, i.e., hard, soft, sandy, regarding the possibility to ground a problem vessel in the haven or its approaches.
- seasonal effects including ice
- navigational characteristics
In the case of a non-sheltered place of refuge, can salvage and lightering operations be safely conducted?
Is there sufficient space to manoeuvre the ship, even without propulsion?
What are the dimensional restrictions of the ship, such as length, width and draught?
Risk of stranding the ship, which may obstruct channels, approaches or vessel navigation.
Description of anchorage and mooring facilities in the place of refuge.
- operational conditions, particularly in the case of a port
Is pilotage compulsory and are pilots available?
Are tugs available? State their number and horsepower.
Are there any restrictions? If so, whether the ship will be allowed in the place of refuge, e.g. escape of poisonous gases, danger of explosion, etc.
Is a bank guarantee or other financial security acceptable to the coastal State imposed on the ship before admission is granted into the place of refuge?

.3 Contingency planning, such as:

- competent MAS
- roles and responsibilities of authorities and responders
Fire fighting capability
- response equipment needs and availability
- response techniques
Is there a possibility of containing any pollution within a compact area?
- international co-operation
Is there a disaster relief plan in the area?
- evacuation facilities

.4 Foreseeable consequences (including in the media) of the different scenarios envisaged with regard to safety of persons and pollution, fire, toxic and explosion risks.

3 Emergency response and follow-up action, such as:

- lightering
 - pollution combating
 - towage
 - stowage
 - salvage
 - storage.
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