

Section III

MANUAL ON OIL POLLUTION

SALVAGE

1997 Edition



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Foreword

This publication comprises section III of the *Manual on Oil Pollution* prepared by the Marine Environment Protection Committee of IMO.

The *Manual on Oil Pollution* consists of five sections:

- Section I *Prevention* (out of print; revision under consideration)
- Section II *Contingency Planning* (first published in 1978; revised edition published in 1995)
- Section III *Salvage* (first published in 1983; revised edition published in 1997)
- Section IV *Combating Oil Spills* (first published in 1988; currently under review)
- Section V *Administrative Aspects of Oil Pollution Response* (to be published in late 1997/early 1998)

The *Manual on Chemical Pollution* consists of two sections:

- Section I *Problem Assessment and Response Arrangements* (first published in 1987, currently under review)
- Section II *Search and Recovery of Packaged Goods Lost at Sea* (first published in 1991)

The Salvage section of the *Manual on Oil Pollution* has been extended to cover substances other than oil. The other above sections of the Manual which relate specifically to oil pollution will, later, be extended to cover substances other than oil.

The Marine Environment Protection Committee thanks the many experts who assisted in the preparation of the text and who contributed tables and diagrams, thereby making the publication of this section possible in its present form.

It is advisable that the national contingency plan (see section II of the *Manual on Oil Pollution*) contains information on where and how resources for the purpose of quick and effective salvage may be available.

This section of the Manual is intended to provide guidance to Administrations and officials involved with oil pollution casualties so that they may effectively mitigate the effects of such accidents, particularly in relation to the salvage of vessels and cargo.

While most oil pollution casualties are likely to involve tankers, it should be noted that many dry cargo and passenger vessels have a bunker capacity of several thousand tons and may therefore pose a serious threat of oil pollution if involved in an accident.

Acknowledgements

The illustrations from *Reed's Commercial Salvage Practice* in appendix 1 have been reproduced with the kind permission of Thomas Reed Publications, 19 Bridge Road, East Molesey, Surrey KT8 9EU, United Kingdom.

Tables 1-5 and figure 1 in appendix 2 and the table in appendix 3 have been reproduced with the kind permission of the International Chamber of Shipping and the Oil Companies International Marine Forum.

Lloyd's Standard Form of Salvage Agreement has been reproduced in appendix 4 with the kind permission of Lloyd's of London, One Lime Street, London EC3 7HA, United Kingdom.

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Chapter 1

Introduction

1.1 General

1.1.1 Despite all efforts to reduce maritime accidents through improved safety measures and technological advances in navigational aids, there will be occasions where oil or other harmful substances are spilled from a vessel as a result of:

- .1 collision;
- .2 grounding;
- .3 striking a wreck or other obstacle;
- .4 fire and/or explosion;
- .5 failure or breakdown of machinery or equipment which results in the impairment of the safety of navigation;
- .6 structural failure;
- .7 storm damage and ice damage;
- .8 flooding; and
- .9 sabotage.



Happy Traveller, March 1990 off Singapore

1.1.2 In most accidents the master, as representative of the vessel owner and the cargo owner, will take immediate action to ensure the safety of his crew, the preservation of the ship, and to stop or limit cargo outflow. The master will also make arrangements, where necessary, for the salvage of the vessel.

1.1.3 The salvor's primary aim will, therefore, be the successful completion of his assignment, whereas the concern of the Administration may additionally involve protection of local industry, fisheries, and maintenance of the ecology of the area. It is important, therefore, that full co-operation between all the parties concerned (Administrations, ship and cargo owners, salvors, etc.) is arranged expeditiously and that, as far as is possible, division of responsibility is worked out in principle and accepted by all parties prior to or at the inception of any incidents. A guide to Administrations, information on salvage methods, specialized salvage equipment, and salvage techniques is attached at appendix 1.

1.1.4 The arrangements should also cover agreement on responsibility for procurement of ancillary equipment which may be necessary and the necessary financial resources.

1.2 Action by the shipowner in the event of a casualty

1.2.1 In most cases the shipowner or operator will be fully aware of any potentially hazardous situation in which his vessel is involved. If in the master's judgement or as a result of the advice to the master by the operator, it is considered desirable, salvage assistance will be arranged on commercial terms. Such salvage contracts are usually with a firm of professional salvors who are experienced in the highly specialized requirements for successful salvage.

1.2.2 Prior to the 1980s, virtually all contracts were on a "no cure-no pay" basis by which the salvor received no remuneration if the ship was not brought to a place of safety. Under these terms, the overriding incentive for the salvor was to get the stricken vessel to a place of safety even though in extreme cases it might be necessary to jettison some of the cargo in order to do so.

1.2.3 The primary concern of a shipowner or operator in such circumstances must be the safety of those on board the vessel. The master, as the owner's representative, must be well aware of the need to seek outside assistance wherever it is necessary. In the special case of oil tankers, the help and expert advice which generally can be provided by the cargo owner is also at the disposal of the vessel's master and owner. Recognizing that, in the case of oil tanker casualties, Governments had the right and duty to intervene to prevent damage to their coastal environment, an agreement was reached in 1980 between a number of influential organizations under the aegis of Lloyd's of London under which, in the case of laden oil tankers only, there would be a departure from the normal no cure-no pay principle so that a salvor could recover his out-of-pocket costs even in cases where the vessel and its cargo were a total loss.

1.2.4 Thus, unless an Administration under its national law or under the provisions of the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969 (Intervention 1969),* as amended by the Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances Other Than Oil, 1973 (1973 Intervention Protocol), if it is a Contracting Party thereto, has taken powers to intervene because of a grave and imminent threat of pollution of its shores, the salvage operation will be dealt with between the owner/operator and the salvor, with both parties complying with the requirements of Administrations as directed.

1.2.5 The award to the salvors in the event of successful salvage is (in default of agreement between the parties) decided by arbitration. The cost of any oil pollution claims as a result of an accident involving a tanker are usually recoverable under the International Convention on Civil Liability for Oil Pollution Damage, 1969 (1969 Civil Liability Convention),† and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (1971 Fund Convention).‡ In the case of both laden and unladen tankers, the compensation schemes allow reimbursement for preventative measures which include salvage operations that minimize or prevent pollution damage, even in the event of an incident where no oil is spilled, provided there is grave and imminent danger of pollution damage (1992 Protocol to the 1971 Fund Convention).§ For hazardous noxious liquid substances, compensation will be covered under the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (1996 HNS Convention), when it enters into force.

1.3 Advice to masters

1.3.1 The various aspects of vessel salvage are covered by the joint International Chamber of Shipping (ICS)/Oil Companies International Marine Forum (OCIMF) publication *Peril at Sea and Salvage - A Guide for Masters* (4th edition). Appendix 2 to this Manual has been drawn from information contained in that publication.

1.3.2 Timely reporting is required under the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78),¶ and the International Convention on Oil Pollution Preparedness, Response and Co-Operation, 1990 (1990 OPRC Convention),|| and should be made to the coastal State(s) concerned

* Refer to IMO sales publication number IMO-402E.

† Refer to IMO sales publication number IMO-410E.

‡ Refer to IMO sales publication number IMO-520B.

§ Refer to IMO sales publication number IMO-456E.

¶ Refer to IMO sales publication number IMO-520E.

|| Refer to IMO sales publication number IMO-550E.

in accordance with IMO resolution A.648(16),* General principles for ship reporting systems and ship reporting requirements, including guidelines for reporting incidents involving dangerous goods, harmful substances and/or marine pollutants. Some States might delineate further in local regulations concerning under what circumstances reports of casualties need to be made.

1.3.3 Emergency response on board ships should be carried out in accordance with regulation 26 of Annex I to MARPOL 73/78 and IMO resolution MEPC.54(32),† Guidelines for the development of shipboard oil pollution emergency plans. Such response should take into account the directions given by the coastal State(s) authorities.

1.3.4 Emergency response procedures on board ships are often different than for similar incidents on land. Land-based responders might not be familiar with shipboard response techniques thereby inadvertently causing damage to the vessel or causing injury to themselves, the local population, or the environment. Additionally, as a result of the automation of shipboard systems, the trend has been towards smaller crew sizes. With smaller crew sizes the land-based response support required during an emergency increases. Accordingly, the master and the shipowner should partner with the local authorities of the ports the ship visits to:

- .1 identify the response needs of the ship;
- .2 identify the response capabilities of the ship and the port;
- .3 identify any shortfalls in response capability;
- .4 establish response agreements and develop contingency plans as appropriate; and
- .5 eliminate response capability shortfalls.

1.4 Position of the Administration

1.4.1 A major part of an Administration's contingency planning must of necessity be related to mitigating damage from pollution in the event of a casualty. One of the most important contributions to this is ensuring, where possible, the prompt and efficient salvage of the ship and cargo. This may well involve such associated disciplines as emergency lightering arrangements and fire-fighting aboard the ship. Thus, the prompt availability of portable pumping equipment, particularly submersible pumps with appropriate power packs, fenders of appropriate size, and lightering craft, as well as other equipment not normally carried by ships or salvage tugs, will be of considerable importance. An assessment of the risk to shorelines, fisheries, and local industry needs to be carried out by the Administration as a matter of urgent priority. The immediate and future actions to be taken by the ship's master, the operator (and in some

* Refer to IMO sales publication number IMO-516E.

† Refer to IMO sales publication number IMO-586E.

cases the cargo owner), and the salvor need to be taken into account in reviewing the overall situation, in order that an agreement can be reached with the Administration on the action to be taken.

Chapter 2

Intervention

2.1 Powers under the 1969 Intervention Convention and the 1973 Intervention Protocol

2.1.1 The Administration, if it is a Party thereto, should be aware of the powers conferred upon it by the 1969 Intervention Convention as amended by the 1973 Intervention Protocol, to intervene in casualty situations which pose a threat of pollution to its coastline or adjacent waters. As a generality, it should be borne in mind by the authority or official exercising powers under the 1969 Intervention Convention* on behalf of an Administration that these only apply after a casualty (as defined in the Convention) has occurred and when there exists a grave and imminent danger to their coastline or related interests from pollution or threat of pollution of the sea. The term *high seas* for the purpose of the above Convention and Protocol means those waters beyond the territorial sea.

2.1.2 What constitutes a grave and imminent danger can only be decided at the time, taking into account the type and quantity of the pollutant, the circumstances surrounding the casualty, the existing and forecast weather, the range and strength of tides and currents, availability of salvage equipment and expertise and such other factors as may be peculiar to that particular incident.

2.1.3 Furthermore, it should be borne in mind that the interests of the shipowner, the salvor and the cargo owner might not always coincide and, in those cases, it may become necessary for the coastal State to intervene in order to reconcile these differences in its own best interest. In other cases, the need to intervene may not arise if agreement exists between all parties.

2.1.4 It should be remembered that whenever these powers have been exercised, the Administration should be prepared to defend its actions as it could be held responsible for costs incurred by unreasonable and excessive exercise of the powers.

2.1.5 Finally, there will come a stage when one of the parties considers that the threat is no longer grave or imminent, and a decision will have to be taken whether and when intervention should cease.

* Further powers may be available under national legislation.

2.1.6 Administrations should satisfy themselves that they have access to the expertise which will be required to enable them to assess marine casualties and related salvage operations and to exercise their intervention powers in an effective and timely manner. This expertise might be available from within the Administration or from elsewhere, for instance, from the IMO panel of experts or from other States.

Chapter 3

United Nations Convention on the Law of the Sea

3.1 Article 221, Measures to avoid pollution arising from maritime casualties

3.1.1 Article 221 of the United Nation's Convention on the Law of the Sea (UNCLOS), gives States the right, "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 coastlines or related interests, including fishing, from pollution or threat of pollution following from a maritime casualty or acts relating to such a casualty, which may reasonably be expected to result in major harmful consequences". This article generalizes the above-mentioned 1969 Intervention Convention and the 1973 Intervention Protocol.

Chapter 4
*International Convention on Salvage, 1989**

4.1 Application of the Convention

4.1.1 The International Convention on Salvage, 1989 (1989 Salvage Convention), replaces, for States which become party to both, the 1910 Convention for the Unification of Certain Rules of Law relating to Assistance and Salvage at Sea (Brussels Convention). A 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. Any other property is defined as any property not permanently and intentionally attached to the shoreline and includes freight at risk. Also included in the definition are aircraft used in salvage operations or even wrecks that might be salvaged. The Convention does not apply to the sea only, but also to the inland waters of a State.

* The International Convention on Salvage, 1989, entered into force on 14 July 1996. Refer to IMO sales publication number IMO-450E.

4.1.2 Some of the highlights of the Salvage Convention, 1989, are discussed in paragraphs 4.2 – 4.6.

4.2 Article 5(3), Salvage operations controlled by public authorities

Article 5(3) stipulates that the extent to which a public authority under a duty to perform salvage operations might avail itself of the rights and remedies provided for shall be determined by the law of the State where such authority is situated.

4.3 Article 6, Salvage contracts

According to article 6, the master shall have the authority to conclude contracts for salvage operations on behalf of the owner of the vessel. The master or the owner of the vessel shall have the authority to conclude such contracts on behalf of the owner of the property on board the vessel. See chapter 6 of this section for more information on contracts.

4.4 Article 8, Duties of the salvor and of the owner and master

Article 8 imposes a duty on the salvor to exercise due care while carrying out salvage operations, to prevent or minimize damage to the environment.

4.5 Article 9, Rights of coastal States

(Article 9 printed in its entirety)

“Nothing in this Convention shall affect the right of the coastal State concerned to take measures in accordance with generally recognized principles of international law to protect its coastline or related interests from pollution or the 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, including the right of a coastal State to give directions in relation to salvage operations.”

4.6 Article 14, Special compensation

4.6.1 The 1989 Salvage Convention keeps up the normal principle of no cure–no pay, but according to article 14, the salvor, who has carried out a salvage operation in respect of a vessel which by itself or its cargo threatened damage to the environment and failed to earn reward because the operation has not had a useful result, shall be entitled to a special compensation from the owner of that vessel equivalent to the salvor's expenses as herein defined. The special compensation might be increased up to a maximum of 30% of the expenses incurred.

4.6.2 Also, upon the request of the salvor, a person liable for payment due under the Convention shall provide satisfactory security for the claim, including interest and costs of the salvor (article 21).

Chapter 5

Advice to Administrations

5.1 Planning prior to a casualty

5.1.1 An appropriate authority within an Administration should be designated to receive all information relating to a maritime casualty or a potential casualty and to take effective action thereon.

5.1.2 This will require establishment of a permanently manned system which can:

- .1 rapidly notify all relevant authorities involved;
- .2 establish the facts and assess the damage potential of the incident;
- .3 establish and maintain contact with all parties concerned (authorized shipowner, cargo owner, salvors, insurance interest, etc.);
- .4 decide whether salvage activities being undertaken by the owner are adequate for the circumstances both present and foreseen;
- .5 decide what additional steps should be taken, if any, by the Administration to facilitate salvage and prevent pollution;
- .6 organize the prompt availability of specialist assistance and special salvage materials and make the necessary financial arrangements therefor;
- .7 review the suitability of specific locations to be designated harbours of refuge (see 5.6) where distressed vessels can more rapidly and safely be attended to and their pollution potential eliminated or substantially reduced and to establish such locations together with appropriate equipment; and
- .8 maintain detailed records of actions taken, costs incurred, damage sustained and remedial actions for subsequent review and preparation of claims.

5.2 Customs and immigration facilitation

All the foregoing steps should be taken in the closest co-operation with those authorities who will have responsibility for clean-up of pollution. Also, prior joint arrangements should be made to expedite the temporary importation and customs clearance of all salvage related and pollution clean-up material. Facilitation of entry of the technical experts required to deal with the casualty should be arranged. The Administration might also wish to avail itself of the services of an independent expert (see article IV of the 1969 Intervention Convention and article VII of the 1990 OPRC Convention) and special arrangements should be made to facilitate entry.

5.3 Communications

It is essential to keep telegraphic authorities and maritime radio stations aware of the specific point to which advisory messages or requests for assistance should be communicated and where necessary to ensure priority handling of such traffic. Administrations may prefer to designate in advance a specific channel for emergency use only, together with detailed arrangements.

5.4 Establishment and maintenance of liaison with interested parties

5.4.1 The parties having special interests related to salvage operations are:

- .1 shipowners and operators,
- .2 insurance companies (P&I),
- .3 cargo owners and their insurers,
- .4 salvors, and
- .5 Administrations.

5.4.2 Various books of reference, such as *Lloyd's Register* and *Clarkson's The Tanker Register*, will give the details of a vessel, its owner and operator, as will the specialized marine computer data banks. If ownership has changed, a facsimile or telex to the reference consulted will rapidly provide the new information. The ship should, in any case, provide the name and address of the owner. Details of professional salvors in the area may be obtained from local or international sources.

5.5 Inventory of specialist salvage equipment

5.5.1 In addition to the equipment which is normally carried on a salvage vessel, it is essential to be aware of the availability and location of other equipment which may be needed to facilitate the salvage of the vessel. Items such as:

- .1 lightering vessels,
- .2 fenders of appropriate size,
- .3 portable pumping equipment (particularly submersible pumps) with appropriate power packs,
- .4 fire-fighting equipment suitable for marine use, and
- .5 portable inert gas generating equipment,

should be located and catalogued. Arrangements should be made for the immediate release of these items in case of an emergency and the appropriate office which can authorize release should be clearly identified. Financial arrangements for the provision of such equipment should also be worked out in advance. For example, many authorities require a letter of credit or bank guarantee as a prerequisite for the release of equipment.