

It's time to close a chapter on STS operations

Marpol Annex I Chapter 8 was intended to support environmentally friendly ship-to-ship operations. Five years on it is seen by tanker operators as an onerous piece of bureaucracy without any accompanying benefits says **Alexandros Glykas***

It is almost five years since Marpol Annex I Chapter 8 was ratified. It was introduced to prevent oil pollution during ship-to-ship (STS) operations and requires:

- the vessel to carry a flag state approved STS operations plan
- the plan to be incorporated into the vessel's safety management system (SMS)
- a person in overall advisory control (POAC).

The legislation, while undoubtedly well intentioned, made STS operations more complicated for tanker operators. It is a not properly studied addition to an area that is already well governed by OCIMF rules and regulations that always were part of the contractual commitment between ship and cargo owner. Rather than offering 'added value' MARPOL Annex I Chapter 8 and the requirement to integrate with a vessel's SMS is an added burden on already overburdened tanker operators.

The call for an STS plan only, is a flawed requirement. A tanker operators STS responsibilities are not defined by the existence of an STS plan only. Rather, the operator has to take a justified approach that takes into account statutory as well as commercial and safety considerations.

Regular readers of *Tanker Shipping & Trade* will recall an article written by Ed Mills-Webb, a partner at the London office of international law firm Clyde & Co, which neatly highlighted Marpol Annex I Chapter 8's shortcomings (*Tanker Shipping & Trade*, August/September 2013). Particular emphasis was given to the requirements concerning the POAC. Mr Mills-Webb pointed out that from a commercial perspective the industry already operates on the basis that the charterer or cargo owner will be the actual provider of the POAC, who will usually be a local mooring master provided by a specialist STS operator company. Shelltime 4 approaches this in the following way in the

standard form Clause 4 lines 101-104:

"Charterers shall exercise due diligence to ensure that any ship-to-ship transfer operations shall conform to standards not less than those set out in the latest published edition of the ICS/OCIMF Ship-to-Ship Transfer Guide".

However, additional rider clauses are common, such as:

"Transfer operations to be in accordance with ICS/OCIMF Ship-to-Ship Transfer Guide.

"Charterers shall provide, at their expense, all necessary equipment and facilities including fenders, hoses, mooring masters, etc, for safe operations to owners/masters' satisfaction which shall not be unreasonably withheld.

"Charterers shall, if required, also provide representatives (mooring master and/or cargo co-ordinator) to board the vessel to give technical assistance to perform ship-to-ship transfer for charterers' account.

"Operations shall be made under control and supervision of the master and to the satisfaction of charterers' representatives."

As Mr Glykas makes clear, the contractual commitment between the parties to a ship-to-ship transfer is detailed and complex. It reflects all of the perceived safety elements essential to a successful outcome. It will also take into account factors like STS Clearance, the suitability of nominated vessels, the technical assistance and preparedness offered to the master, STS equipment quality control, the qualifications and experience of the POAC and last, but not least, post assessment and evaluation of STS records.

Prudent tanker operators, as a matter of course, will have either in-house or third party due diligence procedures to assess ship-to-ship transfers. These procedures will reflect investment in personnel, software and of course accumulated experience. Careful study will be made of all the



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STS elements involved in the upcoming operation. Consideration of past incidents, however major or minor, will feature, and root-cause analysis is increasing standard.

The role of STS organisers, charterers and/or oil majors is to provide all of the necessary information to tanker operators, in order to allow them to ensure nominated vessel suitability and overall safety of the operation. In return, tanker operators should have the means to absorb, process and evaluate the information provided by charterers without delaying the decision making process.

This principle was reaffirmed in *Falkonera Shipping Company v Arcadia Energy Plc Ltd* heard at Bristol Crown Court on 20 December 2012, when Mr Justice Eder stated that "once the nominated vessel is approved as suitable (by the ship owner), all STS transfers require proper detailed planning".

Or to put it another way, the idea that STS operations must be well planned and executed has long been well understood and is well enshrined in regulation. Marpol Annex I chapter 8 and its requirements must be revised. **TS**

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