

Ship-to-ship regulations lack clarity

Regulations governing ship-to-ship operations are unclear on owner/operator responsibilities. A simple checklist can help mitigate the risks and liabilities writes **Ed Mills-Webb***

Since 1 April 2012, all oil tankers of 150gt and above engaged in the transfer of oil cargo between tankers at sea have to comply with IMO Marpol regulations. But who is responsible for the operation?

Marpol Annex I Chapter 8 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 shipowner has a clear responsibility to provide an approved plan which is incorporated into the SMS onboard procedures but it is not altogether clear who appoints and is responsible for the POAC.

The Lloyds Register (LR) model STS plan seems to indicate that the POAC will either be one of the masters of the vessels concerned in the oil transfer or an STS superintendent, lightering co-ordinator or mooring master employed by an STS resource provider. LR proposes that the cargo owners or oil tanker's operators should agree and designate or appoint the POAC for each and every transfer.

There is almost no guidance in the regulations about the level of due diligence that a time-charter operator or cargo owner must meet in order to comply with any of the regulations.

As a starting point, it is questionable whether the regulations apply at all to the charterer or cargo owner, since most issues to do with the vessel's seaworthiness remain with the shipowner and are not generally delegated down the charter party chain (unless it is a bareboat charter). However, Chapter 8, Regulation 41 requires that the POAC: "shall be qualified to perform all relevant duties, taking into account the qualifications contained in the best practice guidelines for STS operations identified by the Organisation" - namely the Oil Companies International Marine Forum (OCIMF) Guidelines 4th Edition. It should be noted from the outset that the requirement under



Ship-to-ship operations are fraught with legal as well as operational complexity

Regulation 41 appears to be an absolute one in the sense that the POAC *shall* have the necessary qualifications, or the regulation is breached. It is therefore not a question of due diligence so far as the vessel is concerned. It must comply.

From a commercial perspective, however, 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."

It is unclear what effect this rider clause has in addition to the standard form Shelltime Clause 4, since most of the issues mentioned

in the rider are contained in the ICS/OCIMF guide and there is overlap between the two provisions. In practice there probably is very little difference, if any, between the two clauses. The question is, therefore: What is required of the operator in order to comply with its obligations of due diligence?

So far as the regulations are concerned, it seems to be at this point that the charterer or cargo owner needs to consider whether it can justify its STS operation input. The list below could be a reasonable starting point for identifying the issues that need to be borne in mind.

As a minimum requirement, the POAC shall:

- Hold an appropriate certificate of meeting international standards
- Attended a recognised ship-handling course
- Conducted a suitable number of manoeuvring operations
- Have experience in STS operations.

In addition, the POAC should be familiar with the transfer area, and available spill clean-up equipment and techniques.

It is not intended that the POAC in any way relieves the ships' Masters of any of their duties, requirements or responsibilities.

The POAC requirement does not address the knowledge and experience of the company that is supplying the individual. The challenge for Charterers, or indeed any party appointing the POAC, therefore, is to identify and apply due diligence criteria that are sufficient to meet the requirements above, but also general enough to allow reliance upon an audit process for STS operations. **TST**

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