

Successful STS operations require joint planning

The master-POAC relationship, STS off West Africa, liability, and the costs and disruption that can arise when vessels suffer a minor dent were all discussed at a seminar hosted by law firm Clyde & Co

Ship-to-ship transfer (STS) of cargo between sea-going ships positioned alongside each other, whether stationary or underway, is a growing business. Some 12,000 operations are now carried out annually according to specialist STS consultancy Dynamarine. This demand has spawned a service industry made up of 60 service providers; seven years ago there were fewer than 10.

Any suggestion that this proliferation of STS operations and service providers, especially in remote and less regulated parts of the world, means that a disaster is just waiting to happen was roundly quashed at a London panel discussion organised by law firm Clyde & Co, and attended by more than 70 industry professionals drawn from the worlds of the owner, the charterer, the law, insurance and the service provider.

What was not in dispute is that the operation is complex and revolves around the relationship between the ships' masters on the two participating vessels and the mooring master, otherwise known as the person in

overall advisory control, or POAC. There is no direct contractual relationship among those parties and this fact generated the discussion's first talking point: Should the master always rely on the services and advice of the POAC?

There was consensus among the panel that masters should, but discussion around the extent of this reliance, and also where ultimate responsibility would lie if something does go wrong. Keith Loffstadt, vice chairman at service provider Fendercare Marine, said that the POAC's specialised training combined with the multiple and competing demands typically faced by masters, meant that it was only logical that masters should rely on the POAC's services and advice. "I know from my own days as a master that it is hard to find the time and the opportunity to practise ship handling skills, and indeed STS skills. It would be unreasonable to expect a master not to take advice in critical situations like STS."

While agreeing, Eamon Moloney of the North of England P&I Association, argued that the term 'person in overall advisory control' was a meaningless expression. "There is no such thing as 'advisory control.' From our point of view a POAC is an advisor and as essential as a pilot in close quarter navigation." For Mr Moloney the real issue is the identity of the POAC. "In our experience they very rarely identify themselves. Following an incident we are often scrambling around

trying to find out who was actually on board the ship. Our advice to our masters is that when POACs come on board, take advantage of them but find out who you are talking to!"

For Clyde & Co partner Ed Mills-Webb these views highlighted the fine line between advisory capacity and responsibility. "When does a POAC's advisory capacity cease and the master's involvement and responsibility begin? I would urge masters to exercise real caution before sitting back and letting the POAC take overall control." A related question, said Alexandros Glykas, an STS due diligence expert with Dynamarine, is defining a POAC's experience. Many charterers have their own criteria."

Robert Gilchrist, a director of service provider SafeSTS, said that for all the focus on the POAC, the role and responsibilities of the master should not be ignored. "Everyone accepts there is more and more STS happening. But where is the training for the masters to make sure that they understand the processes, and see that they are followed? We are not expecting them to be able to handle ships in close proximity at 5 knots underway but they should understand what their authority is, that the process leading up to the STS is correct, and that they are comfortable throughout the STS operation. Before the STS commences there is time for the master to familiarise themselves with whoever is on board the ship."

Having established the right to accept or reject a POAC, discussion was moved on by master mariner Martyn Haines of Clyde & Co who asked: "Who can reject a ship when two ships are nominated, and how is that process handled?"

Capt Gilchrist explained that if both vessels



Ed Mills-Webb (Clyde & Co): "When does a POACs 'advisory capacity' cease?"

Panel participants

- Bob Gilchrist, SafeSTS
- Ajay Gour, Intertanko
- Alexander Glykas, Dynamarine
- Martyn Haines, Clyde & Co (chairman)
- Keith Loffstadt, Fendercare Marine
- Eamon Moloney, North of England P&I Association
- Ed Mills-Webb, Clyde & Co



have an STS plan, the basic assumption is that there are two ships that can perform STS transfer. "There are probably about 50 steps which are documented in what is now called the joint plan of operations, encompassing everything from cargo compatibility to vessel dimensions, weather parameters, mooring liabilities, fendering, commercial considerations and all points in between. This plan only comes when the mooring master [POAC] is on the bridge and he will check key points in the plan with the master."

Mr Loffstadt emphasised the value of the POAC exercising diplomacy in garnering the master's trust. "He will be prudent to ensure that there is a rota on board both ships to ensure that there are sufficient crew on board and available at the right times and not running into fatigue issues."

"The diplomacy comes in if there are two ships – both with a plan, but where those plans are not compatible. On top of that the POAC has an obligation to his company to follow its procedures, which may differ from what the ship master had planned. Before getting to the stage where the ships are put within reach of each other, the POAC has

to get all these plans together and agree on joint planning operations. But nowhere do you find a mandatory requirement for a joint operational plan."

Mr Moloney recalled an incident off the coast of West Africa where he had fielded a request from a master on the bridge asking that a project be averted, as the counterpart vessel was 33 years old, out of classification, and had no inert gas plant. "He felt it was not safe and he was not going to do the STS and we supported him. This was a nerve wracking moment as it caused massive delay and trouble. But the charterers caved in, and three days later they substituted a proper ship, and we stayed on hire for the period. But it would have to be something as blatant as that for a master to actually call off an STS operation. Generally the state of West African shuttle tankers is vastly improved compared with 3-5 years ago, when it was a major problem."

A prevailing industry paradox is that chartered vessels are heavily regulated, but in some of the more remote and less regulated parts of the world they will find a rust-bucket pulls up alongside, said Intertanko's

in-house chemicals and vetting specialist Ajay Gour. "It is time charterers applied the same standards for both vessels."

For Clyde & Co's Mr Mills-Webb, a great deal comes down to the experience of the people on site. "One of the most troubling issues on the market at the moment is where masters are pushing back. In a recent case involving two VLCCs, that went all the way to the court of appeal, the court ultimately found that the company saying "We do not do VLCC transfers" was in breach of the charter party that the company had entered into. Having a company policy that says "We have a blanket ban on STS operations" may be in contravention of your charterparty requirements. It is something to seriously think about."

"We do not reject ships very often," added Mr Loffstadt. "There are incidents where a POAC gets on board a 'bad' ship and has to cope with it." The remedy, he suggested was to give the POAC the discretion to reject an operation and then have the charterers argue it out.

For Capt Gilchrist, vessels were typically rejected on the basis of a technical shortcoming

or their size. "In difficult areas you might say that you will not carry out operations involving tonnage under 20,000 dwt."

Speaking from the floor, Alasdair Adamson, group compliance manager with UML Group, said that his company - which does a lot of STS operations off the coast of West Africa - keeps a database of ships with which it is not comfortable. "We do have a dialogue with owners and managers, and most are receptive. Service providers must be allowed to put safety first."

From here the debate moved on to consider how service providers use letters of indemnity (LoIs).

"We see these letters of indemnity quite often," said Mr Moloney. "Our advice in a perfect world would be that the STS provider be referred to whoever he contracts with. The fallback position is that we instruct our members to go back to charterers and say: "You give us your instructions." The fallback again is that, under duress, sign the LoI rather than abort the operation. But we send a message to everyone that we have done it in furtherance of charterer's instructions.

"We do not like these letters of indemnity because they start with the words: "In consideration of your inviting us to provide STS services." Our members, the owners, have not done that at all. They are a legal fiction



Crew skills are paramount but POACs often report they vary widely



The STS plan only comes when the mooring master is on the bridge

to create a contract against which they can be indemnified. An added irritation is that the parties with whom the STS providers are contracting have got perfectly good indemnities. Masters tend to sign these LoIs rather than ask a question which they suspect will lead to a difficult answer." Revisiting the debates title, he added that in the most extreme disaster, indemnities would be bypassed. "Larger issues would overtake them."

Mr Loffstadt argued that it would be impossible for any service provider to stay competitive if they had to insure against greater losses that could be incurred. "Most STS providers are sailors, not lawyers." Capt Gilchrist pointed out that many owners do not sign contracts with them. "Under such circumstances we have to go on board with an LoI. It must be borne in mind that we are typically guiding one ship when the other ship is underway. It is not straightforward. Indemnities are a first line of defence.

"Service providers carry fairly hefty insurance to cover us for these operations. If a POAC finds himself on the bridge of a ship with an inexperienced team and something goes wrong, where does the liability lie? What if the crew do something wrong, and they have not advised the POAC, or not given a transcript of the conversations between the two vessels at the time of the operation?" Instances where a master refuses to sign are reviewed on a case-by-case basis said Capt Gilchrist.

Most of the claims arise from operations carried out in marginal weather conditions. Sometimes operations start in one set of conditions, the conditions deteriorate, and the problem comes at breakaway, placing the two masters in the difficult position of resolving who makes the decision to abort the

operation when it is half complete.

Mr Moloney pointed out that a saving grace of STS operations is the relatively slow speed of the vessels which prevents, or minimises, the risk of a major breach of the hull. However, even a fairly moderate scratch around the topsides of a tanker is enough to put the vessel offhire in order to degas and ensure that the steel work is completed. This may involve a bill of US\$150,000-US\$200,000. More than this, the period offhire and the cost of degassing and regassing so that the vessel can win back its vetting approval can result in an insurance claim that runs to US\$2 million. "STS claims are becoming quite attritional because of the very high offhire charges."

Mr Mills-Webb agreed. "The repair bill is a small issue compared with relocation costs, the bunkers to get there, the typical 40-60 days downtime, SIRE inspections having to be retaken, consequential losses, and so on. Most cases tend to result in settlements, which the market likes. But this also denies the market the clarity of a decision, so it becomes a never ending circle."

Rounding out the discussion Mr Glykas reminded the gathering that Chapter 8 of Marpol Annex 1 placed an increased burden on tanker owners' liability. They should therefore exercise due diligence, in order to protect their reputation and actions.

Mr Gour said that it was testament to the industry that a serious disaster has not happened in all these years. "Keep in mind that STS is quite an unnatural operation, basically a controlled collision. The facts denote that this is a good, safe and strictly regulated industry. If we keep our due diligence at the right level we should be OK." **TST**

Port authorities are now auditing STS operations



STS providers have an exemplary safety record and the industry benefits from highly skilled and trained personnel

STS operations are subject to ever increasing scrutiny. The personnel to deliver are available but will oil majors relax their requirements to allow them onboard?

While oil majors have carried out full audits of STS contractors for almost half a century, a new, post Marpol change is that port authorities are increasingly auditing STS contractors before they are allowed to leave their shores, says SafeSTS managing director Yvonne Mason.

“We have shipowners doing thorough due diligence on us before we are allowed to touch their ships, and that is over and above the Marpol forms and format. That is an extra level of due diligence that is carried out before we are allowed to go on board their ships.”

Another increasing trend can be seen in the use of simulators in training, including vessel motion prediction and the analysis of the impact of fenders in the open ocean. “While we value our simulator training, personally I like the old way of doing things, where one generation mentors the next,” says Ms Mason. “Certification is one thing. Competency to actually do the job is something else. There are some absolutely

consummate professionals in this industry that have good, valuable knowledge and experience to pass on. We must not lose sight of this.”

Happily for STS providers, SafeSTS director Robert Gilchrist says that he does not see a shortage of skilled personnel to take on STS operations. “There are a lot of very competent people still out there, still willing to train. I do not perceive any shortage of skilled POACs [person in overall advisory control] available for the industry and I do not perceive any shortage of good candidates coming through.” **TST**

Talking point: two POACS are better than one?

November’s Clyde & Co seminar on ship-to-ship operations highlighted the importance not only of crew rest hours, but also those of the POAC. “We are always more than pleased to put a second man on board, especially in West Africa,” said Keith Loffstadt of Fendercare Marine. “It is getting better but it is not of the same standard as everywhere else.”

Robert Gilchrist of SafeSTS said that while a second mooring master is often desirable, commercial pressures can mean that to quote

for a second POAC will mean losing out on a job. “There is a lot of work to be done [in wider industry] in terms of understanding that the role of the POAC is not a one-man role. We are not there yet. We cope by structuring people’s hours on board as best we can.”

Intertanko’s Ajay Gour asked whether charterers would relax their crew matrix requirements to support having extra crew on board during STS operations. A definitive answer was not forthcoming.



Ajay Gour (Intertanko): “Would charterers relax crew matrix requirements to support extra crew onboard?”