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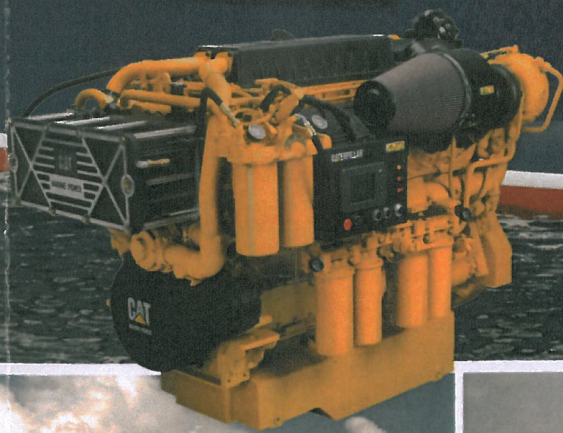
**REVIEW AFRICA**

NOV/DECEMBER 2013

## GAPS IN UNCLOS

Hinders effective  
prosecution of pirates

## MARINE ENGINE FEATURE



# WRECK REMOVAL COVER

**The recent casualties involving the mv Kiani Satu and the mv Smart on the South African coast have demonstrated and reinforced once again that P&I cover for any vessel is vital. To operate a vessel without such cover is not only a great risk to a ship owner, but also to the country on whose shore the casualty may occur.**

Much has been written and said about the infamous *Seli 1* in Cape Town and the *Phoenix* off Sheffield beach. It is common knowledge that both vessels were uninsured and as a result, the fate of the vessels fell into the hands of the South African taxpayer. Not a situation that any South African wants.

## Third party liability insurance

P&I cover is third party liability insurance – a form of insurance that has been in existence for centuries. In the early years of merchant shipping it was not uncommon for the ship owner to be the cargo owner too. As shipping developed and expanded, however, so did the market.

Today, it is not uncommon to find a vessel on a voyage with numerous interested parties involved in that common adventure. The owner often time-charters the vessel. The time charterer can sub-timecharter the vessel to another party who in turn can sub-sub timecharter the vessel to another, who in turn can voyage charter the vessel to another party.

The charterparty chains can at times involve numerous parties and become a nightmare to unravel especially when a maritime casualty occurs. Do not forget that there may even be a bill of lading holder waiting at the end of the chain. The bill of lading evidences a contract of carriage that incorporates numerous terms and conditions regarding the carriage of the cargo.

These terms and conditions set out certain obligations and rights that apply to the carrier and the shipper/receiver/holder of the bill of lading.

Not many readers will know of all the risks and liabilities covered by a P&I insurance policy so I think it would be useful to set them out. Remember that P&I insurance is third party liability insurance so it covers a shipowner in respect of unfortunate events that may arise during a voyage or period of cover.

P&I clubs generally cover the following risks:

- Liabilities for loss of life, personal injury and illness.
- Repatriation expenses in respect of crew.
- Expenses incurred in sending aboard substitutes for crew who have died or who have been taken ill.
- Liabilities in respect of the loss of the crew's affects.
- Shipwreck unemployment indemnity.
- Diversion expenses (charges incurred for the purpose of landing or disposing of stowaways or refugees).
- Collision liability (the one fourth not covered under the marine hull policy).
- Liability in respect of damage to fixed and floating objects (cranes and buoys).
- Liability for damage to vessels other than by collision, e.g., wash damage.
- Liability under towage contracts.
- Wreck removal.
- Quarantine expenses.
- Liability for loss or shortage of cargo or other property.
- Liability for damage to or responsibility in respect of cargo or other property.
- Unrecoverable general average contribution.
- Ship's proportion of general average not recoverable under the marine hull policy
- Fines imposed upon the shipowner
- War risks
- Liabilities in respect of oil pollution.

As can be seen from the list above, wreck removal is an insured risk. I am only aware of five vessels that have grounded on our coastline and that have then been successfully refloated.

These include the *Sealand Express*, *Ikan Tanda*, the *Nino*, the *Phoenix* and most recently the *Kiani Satu*. When you compare this figure against the number of casualties along the South African coastline it is quite apparent that our coastline can be very inhospitable.

The *Costa Concordia* has made many headlines and it is common knowledge that the cost of removing her from her current position is costing insurers hundreds of millions of US dollars. Wreck removal costs are certainly rising all around the world, but then look at the size of vessels that are being built to meet world demand.

The *Emma Maersk* is such a vessel. She weighs in with a dead weight of 156,907 and has a cargo capacity of 5,000teu. She is nearly 400m long or four rugby fields!

Under South African law, a ship owner cannot limit liability for wreck removal, but the South African Authorities, under the guidance of the South African Maritime Safety Authority (SAMSA) and with consultation with the Department of Environmental Affairs (DEA) balance removing a wreck against the impact on the environment as a whole.

Often it is better to reduce a wreck than to remove her entirely. For example, where the wreck is not an eyesore or a hazard to navigation. The impact on the coast and surrounding areas can be far greater and can result in that environment never fully recovering.

A wreck removal notice has been issued by SAMSA in respect of the *mv Smart* off Richards Bay. Salvors have already removed the stern section of the wreck. Tenders have been submitted in respect of the balance of the wreck and no doubt details of the appointed contractor will be made known soon. It will be a costly exercise based on the current market conditions.

## Uninsured

It is alarming that there are still a number of vessels passing South Africa that do not have any insurance cover whatsoever. Generally these are vessels are heading to the scrap yards in the East. Unfortunately,

Tel +27 31 368 5050, Fax +27 31 332 4455

Mobile phone 24 hr number + 27 83 250 3398

Email: [pidurban@pandi.co.za](mailto:pidurban@pandi.co.za)

<http://www.pandi.co.za>

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OFFICES THROUGHOUT SOUTHERN AFRICA



95%

*It should be noted that 95 percent of the world's merchant shipping fleet is entered with a P&I club and therefore these vessels have cover for wreck removal. It is only a small number that we have to be worried about.*

as a country, we cannot ban such vessels sailing around our country in international waters.

We can however protect ourselves by monitoring merchant vessel traffic and keeping a close watch on these vessels especially when they sail close to our coast and anchor unlawfully. It is an offence for an owner to disable a vessel along our coast or to anchor without the permission of SAMSA. SAMSA have the power to send a tug to pull the vessel away from our coast.

South Africa was the first country in the world to introduce emergency towing vessels (ETVs). It is well documented how successful our ETV programme has been and how many major casualties have been averted thanks to the endeavours of the ETVs and their crews.

The *Smit Amandla* (ex *John Ross*) and the late *Wolraad Woltemade* are two such tugs famous for their salvage work. Recently, the *Smit Amandla* pulled the *Kiani Satu* off the rocks in the Goukamma Nature Reserve and she then went onto pull the stern of the *mv Smart* off Richards Bay.

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I think the greatest threat that we face is from a major oil pollution incident. How would South Africa respond to a major oil pollution incident along our coast should one occur? Do we have the ability and the equipment to mount a formidable first response? Where are our pollution abatement vessels and are they now ready for service?

Do we have an incident command system and structure in place so that important decisions can be made timeously to respond to such a spill? But let us leave this topic for the next issue of Maritime Africa.

By Michael Heads, Director:  
P&I Associates (Pty) Ltd

## EU fishing reform to impact international fish management

Speaking at a media briefing in Cape Town, South Africa, the Commissioner of Fisheries of the European Union (EU), Maria Damanki, highlighted the impact that the newly reformed Common Fisheries Policy (CFP) of the EU could elsewhere where overfishing by EU vessels has been an issue.

According to the Commissioner, the new policy, due to be introduced in January next year aims to extract the best value from fish and provide fishermen with a sustainable future. Visiting South Africa during the ICCAT Conference, she said she believes that the EU and South Africa could work together in areas such as research, monitoring and control.

### EU fishing reform long overdue

Reporting that 82 percent of Mediterranean stocks and 63 percent of Atlantic stocks were overfished, Damanki said that the industry faced an uncertain future.

As the biggest consumer and importer of fish, the EU has realised the imperative to change its attitudes and has developed reform measures aimed at sustainability.

The reforms introduced and now entrenched in regulations appear to be far ranging but practical. Discarding of by-catch will be banned and all commercial fish species caught will be landed. The EU is also due to adopt an ecosystem approach to managing the fishing resources.

The CFP also addresses ways to keep local fishing communities alive. Much like South Africa, in the EU small-scale fishing fleets outnumber the larger vessels, but catch a smaller percentage of total tonnage. The Commissioner reported that these fishers has also been incentivised to give up fishing.

It is projected that 2014 will see a 20-30 percent reduction in fishing effort from the bigger vessels. As from 2014, fishing rights per member state operating vessels larger than 12m will be granted for 15 years and they will only be transferable within that member country.

Shortfalls in availability of fish within the EU are due to be bolstered by aquaculture. Adding that there was much "red tape" to remove from the fish farming industry she stated that the EU was firmly committed to more fully develop this sector within an overall strategic plan.

### Same rules apply when fishing in other countries

"When we have fishing agreements with other countries the same rules apply as in EU countries and with the new generation of agreements we can only go where there is a surplus. We take the scientific approach and if there is a surplus then we must respect the sustainability of the stocks and maintain with that country common control and management," said Damanki.

Using as an example the recent agreements concluded with Mauritania she said that the new rules give the state the right to control the EU vessels. "We will work and cooperate with them and help build the infrastructure. This is our new perspective," she said.

Damanki also highlighted the work being done by the United Nations to address overfishing. Illegal, unreported and unregulated (IUU) fishing is a major international problem and the UN has been active in applying regulations to help combat the situation. According to the Commissioner, banning imports from countries flouting the regulations is beginning to have an effect. "We can close markets and it can work," she said.

Commissioner Maria Damanki admitted that it has been a long and hard road to get the EU member states to agree to the reforms, but she remains bullish that stocks can be fished in a sustainable way and can already report that certain species that were previously on the brink are now showing signs of recovery. "It is my job to maintain a balance," she said.

By Steve Saunders

