

**VESSEL DESTRUCTION:
A VIABLE RESPONSE OPTION FOR ISOLATED AREAS**

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ABSTRACT

On numerous occasions over the last ten years, the United States Government used its authority under the Federal Water Pollution Control Act and the Intervention on the High Seas Act to resolve vessel pollution incidents. The Federal On-Scene Coordinator was granted authority to intervene from the Commandant, U.S. Coast Guard, after providing information on the vessel, cargo, damage, owner's actions, recommended actions. This paper will review several vessel incidents which occurred in Alaskan waters and lead to intervention authority being granted to remove, burn in place, or sink the vessel to resolve the pollution problem. Specific cases which are discussed include the M/V RYUYO MARU #2 (1979), the M/V LEE WANG ZIN (1980), the F/V DAE RIM (1981), and the M/V AOYAGI MARU (1988).

DISCLAIMER

The opinions and recommendations presented in this paper are those of the authors. Content should not be construed as representing the U.S. Coast Guard or any other government agency.

The United States is a party to both the International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, entered into force on May 6, 1975, and the Protocol to the Convention Relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other Than Oil 1973, entered into force on March 30, 1983. The Convention and Protocol were implemented into U.S. Law (33 U.S. Code 1471-1487) by the Intervention on the High Seas Act of 1974. The U.S. also enacted national legal authorities for mitigating pollution disasters on the high seas or navigable waters of the U.S. under Sections 311(c) and (d) of the 1972 Federal Water Pollution Control Act (FWPCA), as amended in 1978 (33 USC 1321(c) and (d)), and under Section 104 (a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, (42 USC 9604).

The FWPCA and CERCLA each focus on a different pollution concern. However, each provides legal authority which can be used to intervene and take steps to protect U.S. Waters in response to vessel related pollution incidents. Even though the

International Convention and Protocol are not directly applicable within the Navigable Waters of the United States, the procedures outlined therein are to be followed to the extent possible when intervention is conducted under the authorities of the FWPCA and CERCLA.

Under U.S. Law "intervention" is considered to be any detrimental action taken against the interest of a vessel or its cargo without the consent of the vessel's owner or operator. It includes, but is not limited to, any of the following measures:

- a. salvage operations of a vessel or its cargo which are necessary to reduce the pollution or pollution threat;
- b. transfer of oil or hazardous substances to other tanks or other ships or barges;
- c. deployment of equipment for containing or dealing with a spillage;
- d. removal or destruction of a vessel;
- e. disposal or destruction of the cargo on board;
- f. orders to the Master, owner, or operator of a vessel.

Under U.S. Law the authority to carry out the provisions of the Intervention on the High Seas Act has been delegated to the Commandant of the U.S. Coast Guard. The legal authority and resulting responsibilities include:

- a. coordination and direction of all public and private efforts for the removal or mitigation of the pollution or threat of pollution damage;
- b. the undertaking, either directly or indirectly, of the whole or any part of any salvage or other action which may be required;
- c. to remove and, if necessary, destroy the vessel and or cargo which is the source of danger.

It is important to recognize that under the International Convention and U.S. Law, only those measures that are reasonably necessary for prevention, mitigation, or elimination of the pollution threat are authorized. Unnecessary interference is to be avoided and intervention actions are to cease upon mitigation or elimination of the threat.

The primary focus of legal authority under the Intervention on the High Seas Act is to deal with threats of pollution beyond the Territorial Seas. Since Sections 311 (c) of the FWPCA and 104(a) of CERCLA also provide implicit authority for intervention on the high seas, they are also cited appropriately in the Commandant's authorization to intervene. The legal authority under Section 311(d) of the FWPCA is limited to intervention action upon the navigable waters of the U.S. which include the territorial seas and internal waters.

The legal authorities discussed up to this point have not just collected dust. The U.S. Coast Guard has used the authorities numerous times over the last ten years to mitigate or prevent pollution incidents.

While the immediate thought in many peoples' minds when intervention is mentioned is the destruction of a vessel, that has not always been the case. These authorities have been used

on several occasions to simply lighter cargos as in the M/V WELLWOOD (Florida, 1984) and the M/V ANANGEL LIBERTY (Hawaii, 1980), or to prevent a vessel from being towed into port as in the T/V PUERTO RICAN (California, 1984). The M/V WELLWOOD incident was the first case in the U.S. utilizing the authorities given under the Intervention on the High Seas Act.

It is important to remember that intervention action must be detrimental to the interest of the vessel or its cargo without the consent of the owner. In a case such as the Tank Barge 283, which capsized off Simeonof Island, Alaska in January 1989, the vessel's owners chose to take the vessel offshore and sink it rather than attempt salvage. Although the Coast Guard provided assistance in sinking the vessel, it was at the request of the owner, and intervention authority was not needed.

However, in isolated areas such as Alaska, the intervention authority has been frequently used to mitigate a pollution threat by destroying the vessel, its cargo, and or its bunkers. The primary reasons for these actions in this area are three fold. First, the vessels involved have been for the most part foreign flag vessels involved in the fishing industry or general cargo trade. Therefore, their limits of liability under the law are low and there is little incentive for their owners to take responsibility for any actions that would exceed these limits, even if for purely public image reasons. Secondly, the logistics involved with mounting a response to isolated areas immediately pushes the cost of actions beyond the limits of liability for most vessels and exceeds the criteria for a timely response. The final premise is that the rough coastline or terrain where the casualty may occur often precludes any other response option. To examine these reasons in more depth, several incidents will be discussed where intervention action resulted in vessel destruction.

M/V RYUYO MARU #2

The M/V RYUYO MARU #2, a 100 meter combination stern trawler/processing vessel grounded at St Paul Island, Alaska in November, 1979. The vessel went aground at the base of a 50 meter cliff that extended two kilometers to the East and four kilometers to the West. Surf conditions and water depths precluded any opportunity for vessels supporting salvage or bunker off-loading operations coming alongside.

In addition, the ship's engine room was flooded causing a loss of all ship's power and the grounding caused a release of ammonia from the refrigeration system. Concentrations of ammonia over 1000 ppm were found within the superstructure and cargo holds. Although a highline was rigged to off-load the 450 tonnes of fish products, nets, and other materials on board the vessel to gain access to the bunker tanks, the ammonia vapors and weather prevented this operation from taking place.

Due to these adverse conditions and the owner's refusal to take responsibility for pollution mitigation, the Commandant authorized intervention actions to minimize the threat. On November 22, with the assistance of a U.S. Navy Explosive

Ordnance Team, explosives were placed along the hull and in strategic locations in the superstructure and holds to ignite the 265 cubic meters of oil remaining on board, and to intentionally release any oil that did not burn. Because a storm passage was predicted for the evening of November 22, it was felt that any oil that escaped would be dissipated in the heavy surf before threatening environmentally sensitive areas.

M/V LEE WANG ZIN

In December 1979, the M/V LEE WANG ZIN, a bulk cargo vessel, capsized near Dixon Entrance, South East, Alaska. The vessel drifted with only the bottom hull exposed until it grounded near Ketchikan, Alaska. Here the vessel posed a significant threat of pollution to U.S. Waters. After determining that no survivors were trapped within the hull, the Commandant authorized intervention. An ocean dumping permit was obtained from the U.S. Environmental Protection Agency, and the vessel was towed to deep water in the Gulf of Alaska and sunk.

F/V DAE RIM

In March 1981 the F/V DAE RIM caught fire in the Bering Sea and was abandoned by its crew. The fire eventually extinguished itself and the vessel drifted until being taken in tow by another vessel. However, after being towed into the Gulf of Alaska, sea conditions put the towing vessel in extremis and the tow line was severed. The F/V DAE RIM then drifted until it grounded at Attu Island, Alaska. It was believed to have approximately 435 cubic meters of diesel oil on-board. The owners refused to take responsibility to mitigate the pollution threat to U.S. Waters. At this site the Aleutian Island National Wildlife Refuge would have been directly impacted from a spill. The U.S. Navy provided an Explosive Ordnance Detachment to place charges on the hull for in situ burning and a controlled release of oil not consumed by the fire. Due to sea conditions, a boarding party was unable to board the ship to determine the amount of oil remaining on board. A visual inspection by telescope indicated that two tanks apparently remained intact.

Several rounds from a Coast Guard Cutter's five inch gun resolved this problem. Six meter seas quickly dissipated any oil not burned.

M/V AOYAGI MARU

A more recent case of intervention was the grounding of the M/V AOYAGI MARU. On December 10, 1988 this 92 meter refrigerated cargo vessel was in the process of lightering fish products from a processing vessel near Akun Island, Alaska. When the two vessels broke away from each other, a line was caught in the screw of the M/V AOYAGI MARU and the vessel was pushed aground by heavy seas. On December 17, the vessel was declared a total loss by the hull underwriter. The insurers and owner's representatives agreed to remove the 120 cubic meters of diesel oil on board only if the cost of that action would be credited toward their limit of liability if the government chose to take further action. Their proposal did not address the estimated 245 cubic meters of bunker oil and lubricating oils that would have been

left on board the vessel. When the Federal On-Scene Coordinator refused to accept their conditions, the owner declined financial responsibility for any cleanup action. On December 28, the FOSC declared the incident a Federal cleanup activity.

The option chosen for the Federal response included a request for intervention authority for the purpose of burning the oil in place and preventing the chronic release of oil over a long period of time. To complete the operation the diesel oil contained in the forepeak tank was pumped to a support vessel. The flooded cargo holds were pumped dry and the insulation and decking that covered the double-bottom tanks were removed. Hose charges were then cut in half and placed longitudinally along the tank tops in each hold and covered with sand bags to direct charges downward. When detonated on March 19, 1989, the bunker oil that was pressed up in the tanks was released into the cargo hold. The diesel oil was then pumped into the cargo hold on top of the bunker oil and the entire ship was set afire with thermite charges. The fire aboard the ship blazed for two weeks with no sighted release of oil into the surrounding waters. The entire operation was conducted within the vessel's pollution liability limits.

SUMMARY

As shown in the above case studies, destruction of vessels is a viable response tool. This is especially true in areas such as Alaska, where other types of response resources are not readily available and the logistics involved in bringing them to the pollution scene makes them very costly. U.S. Coast Guard policy is to make every effort to provide the responsible party with the opportunity to conduct a proper cleanup and to control the source of pollution. However, at times this policy does not provide for a timely response effort either on the part of the responsible party, or the government if that party refuses to take proper actions. It is also not in the best interest of the taxpayers to be burdened with ultimately paying the difference between the seemingly low limits of liability for which the maritime industry is responsible and the actual costs of mitigating casualties when the Federal government is forced to take corrective actions.

It is recommended that future legislation be implemented to resolve several problems in this area. First, increase the limits of liability for vessels engaged in trade in isolated areas where response costs are inflated due to logistics and lack of competition. This would ensure that more adequate funds would be available to owners through insurers to conduct a proper salvage or cleanup. Secondly, require domestic, foreign, and joint venture fishing industries and other commercial industries supporting their activities in the Bering Sea to form a pollution response cooperative similar to the co-ops formed by the oil industry in other coastal areas. This action would ensure, to some degree, that adequate response equipment would be available in a timely manner. And thirdly, institute some method of providing an incentive for small vessels and companies operating

in remote areas to conduct proper response activities. Failure on the part of the owner to conduct an appropriate salvage or cleanup would limit or void their certificates, permits, or fishery allocations. Until owners or operators are financially forced to take more complete responsibility for marine pollution incidents, the U.S. Government will have to continue to take intervention action to resolve pollution incidents in remote areas.

REFERENCES

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