

PORTS AND PLACES OF REFUGE SOUTH AFRICA



P&I Associates (Pty) Ltd

Ports and Places of Refuge



- **The Geographical area**
- **Inclement weather**
- **Possible places of safety for deep draft vessels**
- **The ports of South Africa**
- **The Legislation**
- **South African Maritime Safety Authority (SAMSA)**
- **Transnet National Ports Authority (TNPA)**
- **The requirements including guarantees**
- **Available resources**
- **Club Correspondent's role**

Ports and Places of Refuge



- **However, before I discuss the issue of ports and possible places of refuge along the South African coast one has to understand that shipping is and always will be at the mercy of many different perils**
- **These perils can occur both singularly or simultaneously**
- **Unless one understands the likelihood of a peril occurring then maybe this amazing industry is not for you**
- **The following slide illustrates this point quite dramatically**

The Legislation



- **Marine Traffic Act, Act 2 of 1981**
- **South African Maritime Safety Authority Act 5 of 1998**
- **Merchant Shipping (Maritime Security) Regulations 2004, which incorporate Regulation XI-2/9 of SOLAS [ISPS]**
- **Marine Pollution (Control and Civil Liability) Act 6 of 1981**
- **Wreck and Salvage Act 94 of 1996**

The Marine Traffic Act



- **Entry into and departure from internal waters**
- **4. (1) Subject to the provisions of this Act the master of any ship shall not, except as prescribed by regulation, cause it to enter or leave internal waters other than a harbour or a fishing harbour.**

The Marine Traffic Act



- **Immobilizing, laying-up, stopping or anchoring outside harbours or fishing harbours**
- **5. (1) Except with the permission of the Minister and in accordance with any condition prescribed by regulation or imposed by the Minister in a particular case, no person shall within the territorial waters or internal waters immobilize or lay-up a ship outside a harbour or fishing harbour.**

The Marine Traffic Act



- 5 (2) The Authority may require the master or owner of a ship immobilized or laid-up or to be immobilized or laid-up to **find security to the satisfaction of the Authority** in an amount determined by it for the recovery of any costs incurred by the Authority in enforcing any condition applicable to the immobilizing or laying-up of the ship, or in the exercise of its powers under this Act.

The Marine Traffic Act



- **5 (3) No person shall stop or anchor a ship for repairs within the territorial waters or internal waters outside a harbour or fishing harbour **except with the main engine thereof kept in readiness for immediate use** and in accordance with any condition prescribed by regulation or imposed by the Minister in a particular case.**
- **5 (4) Any person who contravenes the provisions of subsection (1) or (3) shall be guilty of an offence.**

SAMSA



SAMSA – South African Maritime Safety Authority.



The Mission of SAMSA is:

To promote South Africa's maritime interests and development and position the country as an international Maritime Centre while ensuring maritime safety, health and environmental protection.

SAMSA



- The primary role is:
- Participating in the development and implementation of national and international **maritime safety and marine environment protection standards**;
- Enforcing technical and operational standards for all shipping operations in South African waters and for South African ships anywhere, to promote responsible operations in terms of **seaworthiness, safety and pollution prevention**;

SAMSA



- Enforcing training standards and competency of seafarers;
- Managing the national capability to **respond to marine pollution incidents and other maritime emergencies**;
- Operating the **Maritime Rescue Co-ordination Centre** to coordinate maritime assistance services and to detect, and coordinate the location and rescue of people in maritime distress situations throughout the internationally agreed South African Search and Rescue Region;

SAMSA



- **Overseeing the provision of maritime distress and safety communications services to discharge South Africa's responsibilities under the Global Maritime Distress and Safety System;**
- **Administering South Africa's voluntary ship reporting system (SAFREP) for identifying and tracking ships at sea for safety purposes and to provide a ships' database for responding to marine emergencies;**
- **Investigating maritime casualties;**

Permission for Refuge



- **SAMSA** thus have the authority to prevent a vessel coming towards the coast to seek refuge and this authority extends to all bays and anchorage areas.
- However notwithstanding SAMSA's authority the Ports of South Africa are all controlled by the **Transnet National Ports Authority**
- We do not have a SOSREP in South Africa and it is my view that we **NEED ONE!!**

TNPA



- **TNPA** is the Transnet National Ports Authority
- Transnet is fully owned by the South African government but operates as a corporate entity aimed at both supporting and contributing to the country's freight logistics network.
- **TNPA** is a division of Transnet



TNPA



- **The South African National Ports Authority (NPA) is the custodian of the country's primary trading hubs, managing the most vital conduits of the country's imports and exports.**
- **Seven of the country's major seaports are controlled and managed by the NPA namely; Richards Bay, Durban, Saldanha, Cape Town, Port Elizabeth and Ngqura (Coega), East London, and Mossel Bay.**

TNPA



- **Port Rules**
- **Transnet National Ports Authority has developed Port Rules in terms of section 80(2) of the National Ports Act "for the control and management of ports and the approaches thereto and for the maintenance of safety, security and good order in the ports".**

TNPA



- The National Ports Act provides (section 11) that "The main function of the Authority is to own, manage, control and administer ports to ensure their efficient and economic functioning, and in doing so the Authority must (amongst other things):
- (g) **regulate and control navigation within port limits and the approaches to ports;**

Requirements for Refuge

- Before a vessel can seek refuge at a place or port in South Africa **SAMSA** have to first give their approval.
- If a particular port is selected as the place of refuge then additionally the **TNPA** would also have to be consulted and give their approval



Requirements for Refuge

Regardless of any other factor SAMSA and the TNPA will always consider the saving of life as being paramount.



The **MRCC** at Cape Town coordinates all rescue operations in conjunction with the Harbour Master at the nearest port



Requirements for Refuge

Once issues of saving life and the environment have been accomplished only then would consideration be given to saving property



Despite the fact that property comes last on the list, South Africa, as a coastal state, **does recognise the need for vessels to seek refuge** and in general will assist in this process.

Requirements for Refuge



- It is essential that the ship owner is totally open and transparent in all dealings with the Authorities and divulges all aspects of a matter.
- **“Utmost Good Faith” must prevail at all times**
- A failure to disclose a particular aspect may lead to a vessel being barred from seeking refuge.
- It is essential to ensure that as much information as possible is provided and the following list, although not exhaustive, should be considered.

Requirements for Refuge



- Full details of the vessel and her cargo and bunkers
- Details of the voyage – last and next port
- Identity of the owners/operators of the vessel
- Identity of the liability insurers and Classification Society
- Full details of the reason for seeking refuge
- Manoeuvrability of vessel during refuge
- Estimated time needed to be in refuge area
- Any known or anticipated additional risks

Requirements for Refuge



- In cases where refuge is required say merely for a shift in cargo and neither the vessel's structure, stability or manoeuvrability is compromised in any way then in most cases the requirements are relaxed and SAMSA may even not become involved.
- If the vessel's structure is compromised then almost certainly SAMSA will require to inspect the vessel offshore prior to granting permission to close the coast. Such inspection would be jointly with the vessel's Classification Society surveyor.

Requirements for Refuge



- Whereas the normal territorial limits are considered to be 12 NM SAMSA can insist that, in matters where the environment may be at risk, an inspection takes place at least 50NM off the coast. South African has a 200 NM EEZ (exclusion Zone).
- The cost of a SAMSA surveyor attending is for the ship owner's account
- If a vessel requires to enter a port generally the TNPA will allow the vessel entry if SAMSA has found the vessel safe to close the coast

Requirements for Refuge



- Fully Loaded deep draft vessels present the greatest challenge as although the ports of Saldanha Bay, Ngqura (Coega near PE) and Richards Bay are all moderately deep water harbours the TNPA will seldom permit a deep drafted vessel to enter port for lay-by or repairs – this is sadly generally a commercial consideration and a decision usually due to the lack of facilities and available berths.
- TNPA would not be able to say **NO** to **SOSREP** decision

Requirements for Refuge



- **South Africa is on the main trading route for vessels carrying iron ore from Brazil to China and there have been a number of incidents involving these vessels where refuge has been sought.**
- **Fully loaded ore carriers of “Cape” size have been allowed to seek places of refuge however if the vessel is to be immobilised and/or the structure is compromised then the requirements of SAMSA are far stricter.**

Requirements for Refuge



Worst case scenario requirements

- All fuel bunkers and black oil (including contents of engine sumps) to be removed from the vessel
- Vessel to be attended to by an adequately powerful salvage tug that has to be made fast
- A salvage contractor be appointed by owners (should be an ISU member)
- An operational plan be approved by SAMSA
- A suitable guarantee to be in place

The Guarantee



- Both **SAMSA** and the **TNPA** recognise and accept Club letters from IG Clubs.
- The format of the letter has been agreed and is a variation on the IMO suggested wording for Ports of refuge. The variation is to incorporate the provisions of local law.

Requirements for Refuge



- To: South African Maritime Safety Authority,
- RE: "XXXXX" – [*nature of the problem*]
- Request to proceed to [*Place/Port*] for [*reason for refuge*]
- ETA [*Insert date/time*]
- In consideration of:
- Your agreeing to the entry into port or other place of refuge, of the M.V. "XXX" ("the Vessel") and;
- Your agreeing not to arrest or detain the Vessel or any other ship or property in the same or associated ownership, management, possession or control;

The Guarantee



- We being duly authorized by [**The name of the Club**], (“the Club”) undertake that the Club will pay you, within 14 days of receipt by us of your written demand, such sum or sums as may be found by the final unappealable judgment of the High Court of South Africa, [**Location of the court**] (exercising its admiralty jurisdiction) or agreed in writing between us to be due to you from [**name of owners**] (“the Owners”) the Owners of the Vessel in respect of (i) **the removal, destruction or marking of the wreck of the Vessel and/** or (ii) **any pollution clean-up or pollution prevention expenses (individually and collectively (“the Claims”))**, provided always that our liability hereunder shall be:
 - 1) Limited in any event to the total aggregate sum of US\$ **XXX** (*In writing*), less:
 - a) any amounts the Club have paid under any Certificate of Financial Security issued by us or on our behalf in respect of or relating to the Claims; and

The Guarantee



- b) any amounts paid or payable by the Owners of the Vessel or by the Club in respect of or relating to the Claims, whether paid under this Guarantee or otherwise; and
- c) any amount equal to any limitation fund(s) constituted by the Club or the Owners of the Vessel in relation to the Claims in accordance with any applicable law; and
- 2) without prejudice to or waiver of:
 - a) any rights the Owners of the Vessel may have to limit their liability under any applicable law or convention;
 - b) any rights including the right to limit liability or defences which the Club may have under any applicable law or convention.

The Guarantee



- We hereby further undertake, when called upon to do so, to instruct solicitors in [**Name of place**], to accept service of any proceedings issued on your behalf in connection with the above incident and hereby confirm that we have irrevocable instructions and authority from the Owners of the Vessel so to do and further to agree that any claim of each party against the other and any and all disputes between the parties arising from this incident shall be exclusively determined by the High Court of South Africa, [**insert region**] (exercising its admiralty jurisdiction).
- This guarantee shall be governed by and construed in accordance with **South African Law**.

The Guarantee



- It is important to note that South Africa is still on the 1957 limitation Convention albeit we have adopted the SDR protocol
- However in terms of Law (The Wreck and Salvage Act) a ship owner **cannot limit liability for wreck removal.**

Available Resources



- **Since 1978 South Africa has had a salvage tug on standby to assist vessels in trouble.**
- **South Africa was the first country to recognise the need to have a tug solely for the above purpose – Emergency towing vessel (ETV)**
- **The current Government contract for the ETV is with Smit Amandla Marine – a South African subsidiary of Smit in Holland.**

A recent problem



- In 2009 a fully loaded handy size bulk carrier developed an engine problem and requested to berth in Cape Town.
- Permission was granted but the owners failed to disclose the true nature of the problem.
- The vessel grounded in Table Bay after the engine room became flooded.
- The vessel's H&M cover had apparently lapsed
- The P&I underwriters (The Russian Pool) withdrew cover as the vessel had no H&M cover.

A recent problem

- It got worse when the vessel caught fire after contractors, appointed by the government, made a slip up whilst cutting.



A recent problem



- The “Seli 1” incident almost closed the book on ports of refuge as far as the Government was concerned.
- As P&I Associates represents all IG Clubs we acted very quickly to meet with the relevant government agencies to explain to them the structure of the IG and that any guarantees issued by the IG would be honoured.
- As a result of the “Seli 1” incident South Africa is making changes to the law to include proof of H&M and P&I cover before allowing vessels to seek refuge.

The Environment

- May be oil pollution or even other types of pollution/problems **MV Kiperousa** - LOGS
- Always necessary to monitor the activities of the authorities and any clean-up company



INVESTIGATION

- Investigation into incident.
- What was the cause of the incident?
- Gather evidence to handle and defend claims
- Crew statements vital = what happened
- Deal with port state authorities –in South Africa SAMSA they may also require the information
- The preserving of the evidence is vitally important



MARINE INSURANCE



- If you do not have insurance and you are involved in the marine industry than you do so at **your own risk**
- The risks of transporting goods at sea is **RISKY** no other word to describe it
- **Anything** and **everything** can go wrong
- So I have already mentioned the weather and the ship
- But what about the cargo itself that is being carried?
- And don't ever forget the crew.