



Organization of
American States
More rights for more people



AMERICAN SALVAGE
ASSOCIATION



Inter-American
Committee on Ports

Mike Mitchell

Solicitor & Master Mariner
MFB Solicitors



















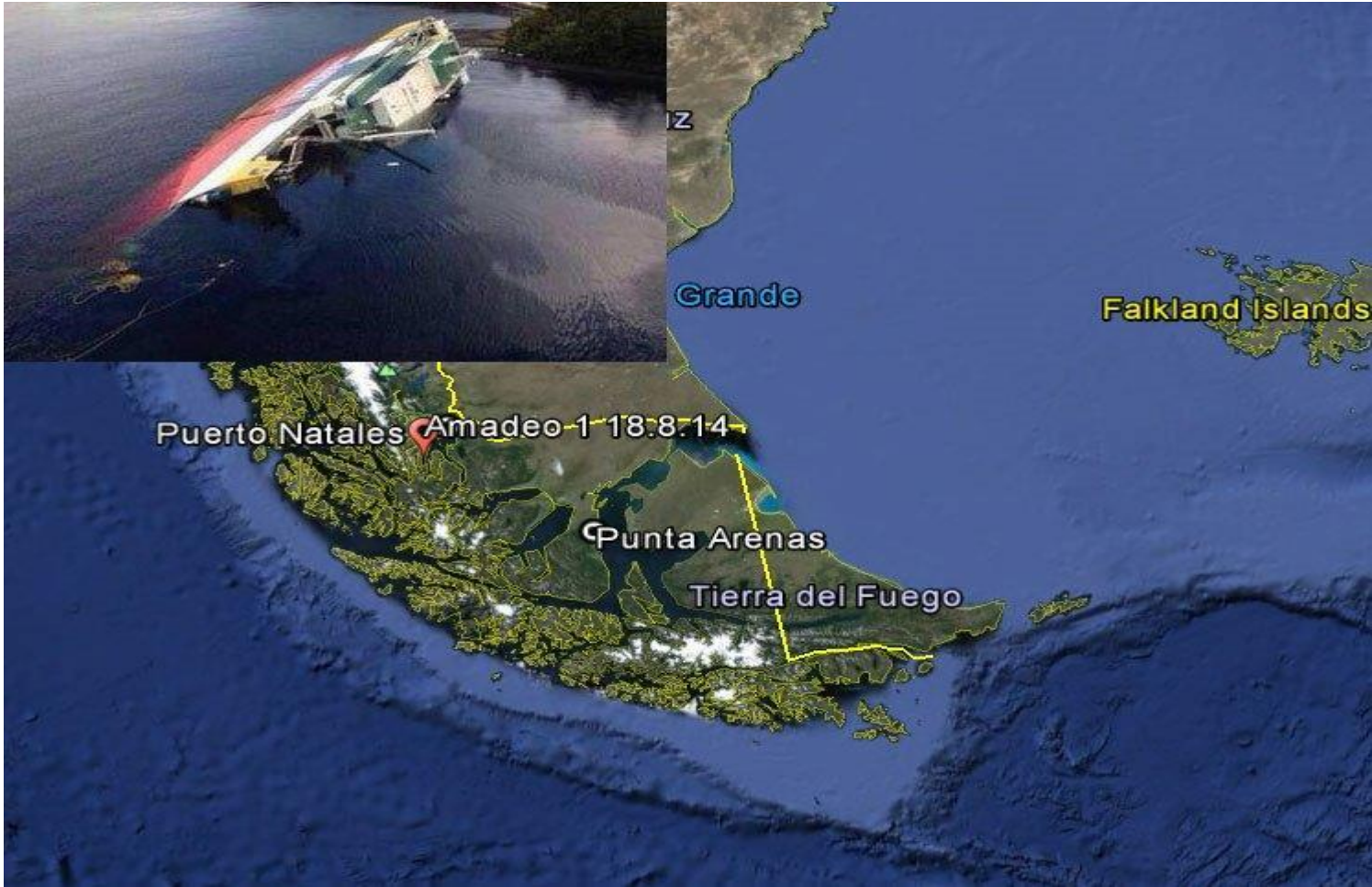












OUTLINE

- Salvage - funding
- Wreck Removal - funding
- Contracts
- International Conventions
 - Salvage Convention 1989
 - Limitation of Liability 1976
 - “Nairobi” – Removal of Wrecks 2007
 - Place of Refuge

FUNDING

- Salvage
 - Hull and cargo insurers
 - P&I
- Wreck Removal
 - P&I
 - Government

CONTRACTS

- Salvage
 - Lloyd’s Open Form Salvage Agreement / Scopic
 - BIMCO “Wreck” Contracts
- Wreck removal – the “good, bad and ugly”
 - Wreckhire
 - Wreckstage
 - Wreckfixed
 - Marine Service Agreement
- Role, impact and influence of Port Authorities

INTERNATIONAL CONVENTIONS

- Salvage Convention 1989
- Limitation of Liability Convention 1976
- “Nairobi” Convention on the Removal of Wrecks 2007
- Place of Refuge
 - IMO Guidelines A949
 - EU Directive 2009 / 17
 - Post MSC FLAMINIA – EU Operational Guidelines on Places of Refuge – November 2015

SALVAGE CONVENTION 1989

- Old concept: Admiralty Judge – *The Waterloo* 1820: “It is what the law calls *jus liquidissimum*, the clearest general right they who have save lives and property at sea should be rewarded for such salutary exertions”
- Salvor will receive a reward from the value of the property – ship and cargo – salvaged
- Salvage contracts – Lloyd’s Open Form (Scopic) others – Japanese and Turkish Salvage Forms

SALVAGE CONVENTION 1989

- Article 6 – Salvage contract – authority
 - 2. “The Master shall have the authority to conclude contracts for salvage operations on behalf of the Owner of the vessel. The Master or Owner of the vessel shall have the authority to conclude such contracts on behalf of the Owners of the property on board the vessel”
- Modern communications between vessels and Owners / Managers

LIMITATION OF LIABILITY CONVENTION

1976

- Shipowner permitted to limit liability for many years -1733
- Purpose to encourage trade with potential for high risk and liabilities
- International Conventions have set out right of Shipowners to limit - 1924, 1957, 1989, 1996 Protocol and most recently amendments to 1996 Protocol - 2015
- Shipowners – now Charterers, Managers, Operators and Salvors
- Example – ship and cargo lost- cargo owner has claim for US\$50M based on size of vessel – limitation calculation US\$10M = limit of shipowners liability

LIMITATION OF LIABILITY CONVENTION

1976

- Article 2 list claims that can be limited including wreck removal
- Wreck Removal – Article 2.1 (d) “claims in respect of the raising, removal, destruction or the rendering harmless of a ship which is sunk , wrecked, stranded or abandoned,...”
- Many States / Jurisdictions exclude this right. Some do not – examples: St Lucia, Mexico and some European countries.
- If the shipowner can limit for wreck removal?

CONVENTION ON THE REMOVAL OF WRECKS 2007 (“NAIROBI CONVENTION”)

- Came into force 14 April 2015
- IMO – stated purpose:
- *“The Convention will fill a gap in the existing international legal framework by providing the first set of uniform international aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial seas (“my emphasis”)*
- Contracting states may take measures to remove wreck if: “hazard to navigation or the marine environment”

CONVENTION ON THE REMOVAL OF WRECKS 2007 (“NAIROBI CONVENTION”)

- Convention area – Exclusive Economic Zone (EEZ) but not Territorial Seas
- “Ship” includes fixed or floating platforms
- “Wreck” – ship – sunk, stranded or adrift as consequence of maritime casualty
- Reporting requirements
- Liability shipowner
- Compulsory insurance

EU OPERATIONAL GUIDELINES ON PLACES OF REFUGE NOVEMBER 2015

- Salvage operations can avoid wreck removals but not always
- Wreck removal
- Place of Refuge
- German Bureau of Maritime Casualty Investigation reviewed the actions of States during incident of MSC FLAMINIA
- Recommended a review be carried out by EU – 2015 Guidelines

EU OPERATIONAL GUIDELINES ON PLACES OF REFUGE NOVEMBER 2015

- CHAPTER 1 – Roles and Responsibilities
- CHAPTER 2 – Reporting and Monitoring
- CHAPTER 3 – Co-ordinator between States
- CHAPTER 4 – Requesting a Place of Refuge
- CHAPTER 5 – Risk Assessment and Inspection
- CHAPTER 6 – Decision making:
“There should be no rejection without inspection. The State that receives a request to provide a place of refuge cannot refuse for commercial, financial or insurance reasons alone”.
- CHAPTER 7 – Compulsory insurance











International Pollution Liability and Compensation Conventions

- Oil – Liability Convention
- Compensation (Fund) Convention
- Bunkers
- HNS
- USA – OPA90
- Themes
 - Strict Liability - Shipowners
 - Limits on Liability
 - Compulsory Insurance
 - COFR