

SUB-COMMITTEE ON NAVIGATION,
COMMUNICATIONS AND SEARCH AND
RESCUE
8th session
Agenda item 8

NCSR 8/8/1
11 February 2021
Original: ENGLISH
Pre-session public release:

**REVISION OF THE GUIDELINES ON PLACES OF REFUGE
FOR SHIPS IN NEED OF ASSISTANCE (RESOLUTION A.949(23))**

Comments on document NCSR 8/8

Submitted by IACS

SUMMARY

Executive summary: This document comments on the report of the Correspondence Group on Revision of the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23))

Strategic direction, if applicable: 1

Output: 1.20

Action to be taken: Paragraph 28

Related document: NCSR 8/8

Background

1 NCSR 7 established a Correspondence Group on Revision of the Guidelines on places of refuge for ships in need of assistance (resolution A.949(23)), under the coordination of the United Kingdom. IACS has participated in the Correspondence Group and would like to express its appreciation to the coordinator and all those involved in efficiently progressing the work in accordance with the set terms of reference.

2 IACS is concerned that assumptions around the operational models and contracting arrangements for providers of Emergency Response Service (ERS), if finally set in the proposed draft guidelines, would recommend arrangements which may not be supported by ERS providers. Those provisions could cause conflicts of interest or could force the release of intellectual property (IP) with associated departure from confidentiality agreements ("limited use" confidentiality agreements are often required to be signed by ERS and shipyards to allow hull form data to be used; a fee is also often charged to the ERS for their use). This would create a conflict between provisions of the Guidelines and actual operations, when ERS operations are not wholly governed by IMO instruments.

Discussion

3 IACS considers that, while most of the text in the draft revised guidelines serves its intended purpose well, there appear to be a number of statements which make assumptions about the operating model of ERS providers. The most fundamental of those is that all ERS providers are associated with a classification society although there is no regulation requiring this to be the case.

4 Furthermore, certain provisions are included in the draft revised guidelines based on assumptions which may be at odds with existing contracts (of which there are many thousands in place) between ERS providers and their clients; those contracts have served appropriately since the inception of such services. An example of one such assumption within the draft revised guidelines is that ERS providers will, by default, work and share IP directly with salvors. However, this is not the case; appropriate contracts, agreements and protections need to be drawn up before the involvement of a salvor to protect the client and the ERS.

Proposals

General proposals

5 In order to align with the proven good practice and improve clarity, IACS proposes the following general amendments.

6 IACS understands that the title of the draft revised guidelines specifies their application to cases of ships seeking a place of refuge and, at the same time, being in need of assistance. However, the text of the draft revised guidelines in a number of places refers to "ships in need of assistance" only. IACS believes that the unintended consequences of this reference would make the Guidelines relevant to cases for which they are not intended, e.g. when a vessel is in need of assistance in deep seas. Therefore, IACS proposes to replace the phrase "ships in need of assistance" by the complete phrase "ships in need of assistance and seeking a place of refuge" throughout the draft revised guidelines.

7 Where an abbreviation has been defined in the text, IACS suggests that the abbreviation should be used consistently and the full terminology should not be reused, e.g. after "...hereinafter referred to as a competent authority (CA)" in paragraph 1.4.2, the following paragraphs should proceed to utilize "CA". The same is true of the abbreviation "PoR" for "place of refuge" in paragraph 1.4.6 and thereafter.

8 Paragraph 2.1.5.2 of the draft revised guidelines states:

"carrying out an analysis of the risks, threats, and hazards identified (to the best of the master's ability or knowledge at the time of the situation) [...]"

9 Taking that paragraph as an example, IACS recommends that the relationship between "hazard" and "risk" is used appropriately throughout the draft revised guidelines, and in this respect, considers that "hazards" are an element in the calculation of a risk, while "threats" are risks with an assumed low incidence. In the above quoted paragraph, it would be sufficient to refer only to "risks" or "hazards".

10 Other such examples include paragraph 2 of appendix 1 to section 4, where the second paragraph reads:

"At all times, the principal focus should remain the protection of human life, the environment, the ship and cargo and the reduction of the hazard to navigation."

11 Considering the explanation above, IACS believes that it would be more appropriate to refer to the reduction of the risk associated with a hazard or removing that hazard all together. Therefore, we would propose that the second paragraph of appendix 1 to section 4 is amended to read as follows:*

"At all times, the principal focus should remain the protection of human life, the environment, the ship and cargo and the reduction of the ~~hazard~~ risk to navigation."

12 On a different issue, IACS notes that mandatory language was used in various instances throughout this non-mandatory document, for example, paragraph 2.2.1.4 states "[...] the salvors will be in direct contact with the ERS [...]", or paragraph 1.2.5 states "Consideration must also be given to the [...]". IACS considers that such mandatory terms need to be replaced with non-mandatory terms.

13 It is noted that the provision of emergency response services from sources other than classification societies is not included in the draft revised guidelines; IACS would suggest that the Sub-Committee considers if other providers should be included.

Specific changes

14 IACS would like to suggest the following specific changes.

Paragraph 1.2.4

15 Experience has shown that a number of marine casualties have been effectively dealt with at sea by ERS providers with the cooperation from ships' captains and crew. To address that certain degree of effectiveness, IACS would suggest the following amendment to paragraph 1.2.4:

"1.2.4 While coastal States may be reluctant to accept damaged or disabled ships into their area of responsibility due ~~primarily~~ to the potential for environmental damage; in fact, it is rarely possible to ~~deal effectively with~~ fully rectify a marine casualty in open sea conditions."

Paragraph 1.4.1

16 IACS understands that the draft guidelines would not mandate outcomes and serve to form a framework supporting decisions only; therefore, it is suggested to replace the phrase "handle and take a decision" with the phrase "aid in decision making", such that paragraph 1.4.1 reads, in part, as follows:

"1.4.1 The purpose of these Guidelines is to provide the basis of an operational framework for coastal States, ships' masters, operators and/or salvors as well as other involved parties to ~~handle and take~~ aid in making a decision when..."

Paragraph 1.5.4

17 IACS considers that resolution A.950(23) provides the full and agreed description of MAS, therefore it is proposed to remove the rest of the text so that paragraph 1.5.4 reads as follows:

* Here and throughout the documents, tracked changes are indicated using "strikeout" for deleted text and "grey shading" from the proposed revised text to highlight all modifications and new insertions, including deleted text.

"1.5.4 MAS means a maritime assistance service, as defined described in resolution A.950(23) ~~responsible for receiving reports in the event of incidents and serving as the point of contact between the shipmaster and the authorities of the coastal State in the event of an incident.~~"

Paragraph 1.5.5

18 For the same reason as above, the description of "MRCC" could be adjusted to read as follows:

"1.5.5 MRCC means a Maritime Rescue Coordination Centre as defined described in the SAR Convention ~~A unit responsible for promoting efficient organization of search and rescue services and for coordinating the conduct of search and rescue operations within a search and rescue region.~~"

Paragraph 2.1.4.1.6

19 It is proposed to clarify that the referred oil could be any oil on board, by making reference to "(fuel, cargo or otherwise)" as follows:

".6 Address from which additional information may be obtained on any oil (fuel, cargo or otherwise) and dangerous cargo on board (i.e. copy of cargo manifest) to the extent known;"

Paragraph 2.1.5.5

20 Because ERS providers do not hold contracts with competent authorities, the ERS provider cannot be activated and cannot share any information without the involvement of the contracted party. IACS believes that sharing of information regarding access to an ERS provider to be of limited benefit to a competent authority. Therefore, it is suggested to replace "any information" with "relevant contact information, activation status and details of the contracting party" as follows:

".5 informing the CA if the ship has access to emergency response services (ERS) and make any information relevant contact details, activation status and details of the contracting party available ~~(e.g. relevant contact details and activation status)~~ to the CA; and;"

Paragraph 2.2.1.4

21 The original text assumes that a salvor may automatically work directly with an ERS provider for the vessel. However, an ERS provider is unlikely to have a contract with salvors and may not necessarily have been authorized by the contracting party to work with them. Furthermore, the original paragraph appears to treat ERS providers and a classification society as a single or related entity and assumes that there may be a free flow of information between ERS providers and classification societies. However, an ERS provider may be separate to and independent of any classification society (although some may offer this as a service, they will still operate independently and with an information firewall unless informed otherwise by the client). To recognize this separation, the change to paragraph 2.2.1.4 is proposed as follows:

".4 (if there is an ERS in place and active for the incident), the salvors ~~will be in~~ may initiate direct contact with the ERS ~~(service by the classification society)~~ to provide them with updates on the condition of the ship".

Paragraph 2.5.1

22 The flag State is generally not part of the contract between the ERS provider and the vessel, therefore that flag State may not have the referenced ERS information. It would be an undue burden for the flag State to obtain, maintain and share such information and the responsibility for this is already covered elsewhere in the draft guidelines. Therefore, it is suggested to delete the phrase "The flag State should also facilitate for any Emergency Response Service (ERS) information to be made available" from the paragraph.

Paragraph 2.5.2

23 For reasons similar to those mentioned above, it is proposed to amend the phrase "and to provide any information" in chapeau of the paragraph to read "and to provide any relevant information that they may hold and are legally authorized to share".

Paragraph 2.5.2.1

24 IACS considers that this paragraph suggests that ERS may, de facto, provide information to crew, salvors or the competent authority, which is not the case. ERS contracts condition that all work must be undertaken at the behest of the contracting party. The responsibility for passing on such information rests with the owner of that information, the contracting party. In addition, at the request of the contracting party, the ERS may work with salvors and or other parties within the bounds of their contracts and any confidentiality agreements that might exist (for example a shipyard may protect the hull data through a confidentiality agreement, which the ERS cannot share without further permissions). Furthermore, the original paragraph interprets and suggests that the role of ERS includes "identifying concerns and possible courses of action". However, generally ERS contracts cover decision making support only, and so inclusion of this content would lead to confusion and potential contractual issues. To address the above points, IACS proposes to amend the paragraph as follows:

- "1 Many classification societies have set up emergency response services (ERS) which ~~ERS can provide information on damage stability and residual strength etc. to the ship's crew, salvors or the CA. From the early critical stages through to repair, ERS~~ may provide support to the contracting party by evaluating the technical aspects of the casualty and identifying concerns and possible courses of action in support to the master/salvor and/or the CA."

Paragraph 2.5.2.2

25 IACS considers that early involvement of ERS following an incident is important and therefore recommends it be stated explicitly. Such early involvement has proven to help prevent incident escalation through misjudgement. Moreover, early involvement of ERS also allows such services to follow an incident and note any important changes which may prove critical during a response. The following changes are suggested to that effect:

- "2 Where the ship has been enrolled in a shore-based ERS service, the service should be activated as soon as possible to assess the vessel damage condition. The ~~and the~~ availability of ERS as a resource ~~resources~~ should be communicated ~~notified~~ to the CA by the master or operator, at the earliest possible junctures as soon as possible."

Paragraph 2.5.2.3

26 IACS opines that contractual agreements should not be jeopardized by stipulation that ERS may, without authorization, share information with "other authorities"; even then, they may only do so within the bounds of their existing signed contracts and the legal framework defined by providers. To ensure certainty and integrity, it is proposed to replace the reference to "the master or operator" with "contracting party", and append "where it is within the existing contractual and legal framework" to the end of the paragraph such that it reads:

"3 [...] ERSs provide rapid technical assistance to the master and, at the ~~master or operator's~~ contracting party's request, to other authorities where it is within the existing contractual and legal framework."

Paragraph 2.5.5.3

27 As mentioned earlier, an ERS provider is not required to be a classification society, and vice-versa. In order to remove the assumption that the ERS for the vessel is provided by a classification society, which may not be the case, it is proposed to remove reference to "(classification society)" in the paragraph as follows:

"3 coordinate the provision of ERS information between the CA and the ERS provider ~~(classification society)~~."

Action requested of the Sub-Committee

28 The Sub-Committee is invited to consider the foregoing, in particular, the proposals in paragraphs 5 to 27, and take action, as appropriate.
