

Place of Refuge versus Waste Law

**IMO Resolution A.949(23), adopted on 5
December 2003**

**GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE**

Place of Refuge versus Waste Law

IMO GUIDELINES ON PLACES OF REFUGE FOR SHIPS IN NEED OF ASSISTANCE, Resolution A.949(23) Adopted on 5 December 2003

- Has (only) a **recommending** character

The main points (1/5):

- Should the ship be brought into shelter near the coast or **into a port** or, conversely, should it be taken **out to sea**?

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Into a port or out to sea?

The “Prestige” was refused to enter a port and broke at sea.

- The costs of the following incident (oil pollution) were 4,3 billion € (spanish publ. prosecutor)
- Against estimated costs of salvage and cleaning up: 40-55 million €



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IMO GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE, Resolution A.949(23)

The main points (2):

- However, to **bring** such a ship into a place of refuge **near a coast** may endanger the coastal State, both economically and from the **environmental point** of view,
and local authorities and populations may strongly object to the operation.

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IMO GUIDELINES ON PLACES OF REFUGE FOR SHIPS
IN NEED OF ASSISTANCE, Resolution A.949(23)

The main points (3-5):

- Granting access to a place of refuge could involve political decision which can only be taken on a case-by-case basis.
- A risk-assessment on a base of valid facts is necessary.
- There is no right to get access.

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Different definitions/terminology of/for ships for different situations

- PoR Res. A.949(23): Ship in need of assistance means a **ship in a situation**, apart from one requiring rescue of persons on board, that could give rise to loss of the vessel or an **environmental or navigational hazard**.
- The possible environmental incident, caused by cargo and bunkers, is in the **future**.

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Different definitions/terminology of/for ships for different situations

- Bunker C.: "Ship" means any seagoing vessel and seaborne craft, of any type whatsoever.
 - over 1.000 gross tonnage
 - The possible environmental incident caused by cargo and bunkers is in the near future or happened already.
- The main object is reimbursement of costs (not liability for costs as acc. CLC).

Place of Refuge versus Waste Law

Different definitions/terminology of/for ships for different situations

- WRC: “Ship” means a seagoing vessel of any type whatsoever and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and *Wreck Removal Convention Act 2011 (c. 8) Schedule — Wreck Removal Convention 11 floating platforms, except when such platforms are on location engaged in the exploration, exploitation or production of seabed mineral resources.*
 - of 300 gross tonnage and above
 - The possible environmental incident caused by cargo and bunkers is in the near future or happened already.
- One object is the reimbursement of costs.

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Ship as **waste**

- After wreck removal to a port this classification is possible
- Waste law is applicable in territorial waters (not in EEZ)
- Wreck is after removal not sunken or stranded or about, or may reasonably be expected, to sink or to strand (Def. of Art. 1 WRC)
- So it is not longer a wreck

Place of Refuge versus Waste Law

Ship as waste

- When it is classified by authorities as waste, those authorities can give orders about its treatment.
- This is also applicable to the cargo that can be classified as waste.

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Ship as waste (by international standard)

The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, 2009 was adopted 2009 and enters into force...

- Ships sold for scrapping may contain **environmentally hazardous substances** such as asbestos, heavy metals, hydrocarbons, ozone-depleting substances and others.

Place of Refuge versus Waste Law

Ship as waste

Hong Kong Convention's main issues (excursus)

- Ship Recycling Plan
- Inventory of Hazardous Material
- Authorization of Ship Recycling Facilities
- Survey, Certification, Inspection

Place of Refuge versus Waste Law

Waste handling in the Port of Refuge

Res. A.949(23), Page 9

“As a general rule, if the place of refuge is a port, a **security in favour of the port** will be required to guarantee payment of all expenses which may be incurred in connection with its operations, such as: measures to safeguard the operation, port dues, pilotage, towage, mooring operations, miscellaneous expenses, etc.”

- Compulsory waste disposal

Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, who pays?

- The insurer of the vessel feels like a “purser”
- P & I-clubs often play a leading role in the management of casualties
- Lack of proof of adequate insurance cover cannot in and of itself form sufficient reason to refuse a PoR-request



Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, who pays?

- The operator or owners feel extort when their salvage-plan is not satisfactory for the authorities
- They wish fixed berth fees also after casualties
- They wish more influence on the authorities decisions
- The security of 19 million € for disposal of 8.000 tons of fire-fighting water and spoiled bulk cargo (ammonium nitrate / fertilizer after decomposition)

Place of Refuge versus Waste Law

Waste handling in the Port of Refuge

Res. A.949(23), Page 12, APPENDIX 2:

“facilities available

- Are there any specialist vessels and aircraft and
- other necessary means for carrying out the required operations or for providing
- necessary assistance?
- Are there transfer facilities, such as pumps, hoses, barges, pontoons?
- Are there **reception facilities for harmful and dangerous cargoes**?
- Are there repair facilities, such as dockyards, workshops, cranes?”

and:

- **GUIDELINES FOR THE EVALUATION OF RISKS ASSOCIATED WITH THE PROVISION OF PLACES OF REFUGE, 2 Assessment of risks related to the identified event taking into account:**
 - .1 **Environmental** and social **factors**

Place of Refuge versus Waste Law

Waste handling in the PoR

What it means: “Facilities available” and “Assessment of risks”

- Dry bulk or liquid cargo
- Container
- General cargo
- Heavy lift
- Dangerous goods
- Noxious substances
- Fire fighting water



Source: Havariekommando

Place of Refuge versus Waste Law

Waste handling in the Port of Refuge Res. A.949(23), Page 13, APPENDIX 2

“.3 Contingency planning, such as:

- competent MAS*
- roles and responsibilities of authorities and responders
Fire fighting capability
- response equipment needs and availability
- response techniques.
- Is there a possibility of **containing any pollution within a compact area?**
- International co-operation.
- Is there a disaster relief plan in the area?
- evacuation facilities”

* (IMO Resolution A.950(23) entitled “Maritime assistance services (MAS)”)

Place of Refuge versus Waste Law

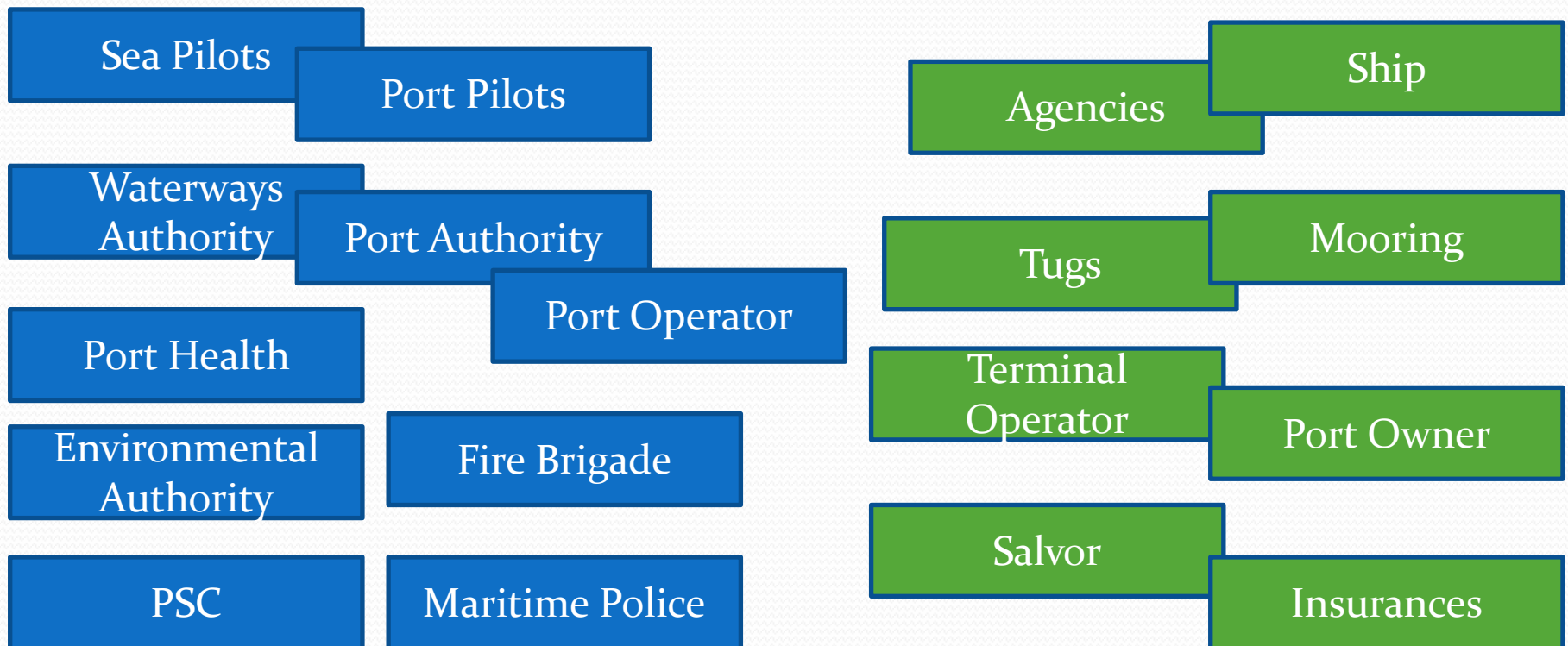
Ship and it's cargo as waste

- The waste-regulations are not original made for ships like e.g. MARPOL-Conv.
- Environmental authorities have no large experience with this kind of waste handling.
- The compulsory permission for the waste handling and treatment is not (yet) standardized (a permission should be tailored to the special hazards of the substances in the waste)
- This means assessment of waste and treatment procedure from recovery to disposal

Place of Refuge versus Waste Law

Ship and it's cargo as waste

- Many different “players” with different interests have to deal with such a case



Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, examples



Source: Havariekommando

1. MSC Flaminia (a clear case of Res. A.949(23))

Place of Refuge versus Waste Law



Source: BSU

1. MSC Flaminia - Brief History –

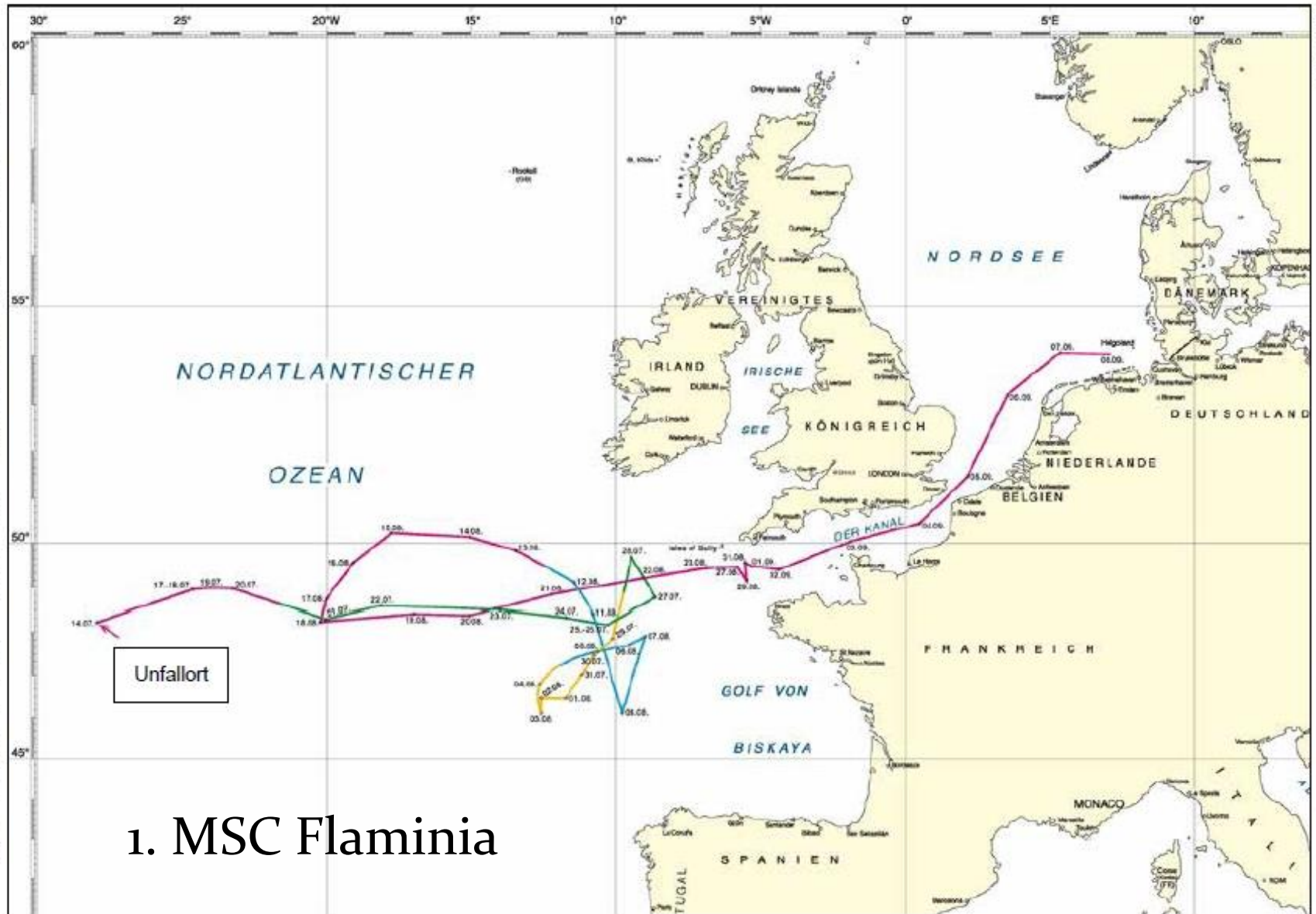
- 2876 Container o/b, 149 with DG in Atlantic Ocean
- 14th July 2012: Smoke –detection-alarm, explosion in cargo hold whilst fire fighting operations. 900 nm from UK, 1.000 nm from CDN.
- Crew (except finally three deaths) rescued the same day by oil tanker
- Salvage-contract with three tugs for fire fighting and towing the vessel to Europe
- 24th July position in distance between 200 and 300 nm from Ireland, England, France and Spain

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1. MSC Flaminia

- Contact of salvor with european coastal states regarding P.o.R.
- 15th August: Germany as flagstate tries to arrange P.o.R.
- 16th August: P.oR.-Request of salvor to german Ministry of Transport
- 28th August: UK, F and Ger boarding team inspects the ship
- 9th September: Ship alongside in Wilhelmshaven
- Unloading damaged cargo
- 15th March 2013: Departure to Romania for repair

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Place of Refuge versus Waste Law

1. MSC Flaminia

Risks

- Danger of explosions, still fire o/b, temp. measured in three cargo holds still near 100° C
- Draft is increasing (danger of sinking); 28th of July: 19 m (from 13,5 m; Tmax: 14,5 m)
- List due to burnt cargo and fire fighting water in hold
- Anchoring is not possible because water depth more than 100 m

Place of Refuge versus Waste Law

MSC Flaminia –Waste removal- in P.o.R

- 35.000 t of contaminated fire fighting water (BSU report , Page 158; 85.823 tdw) for disposal with tankship to DK

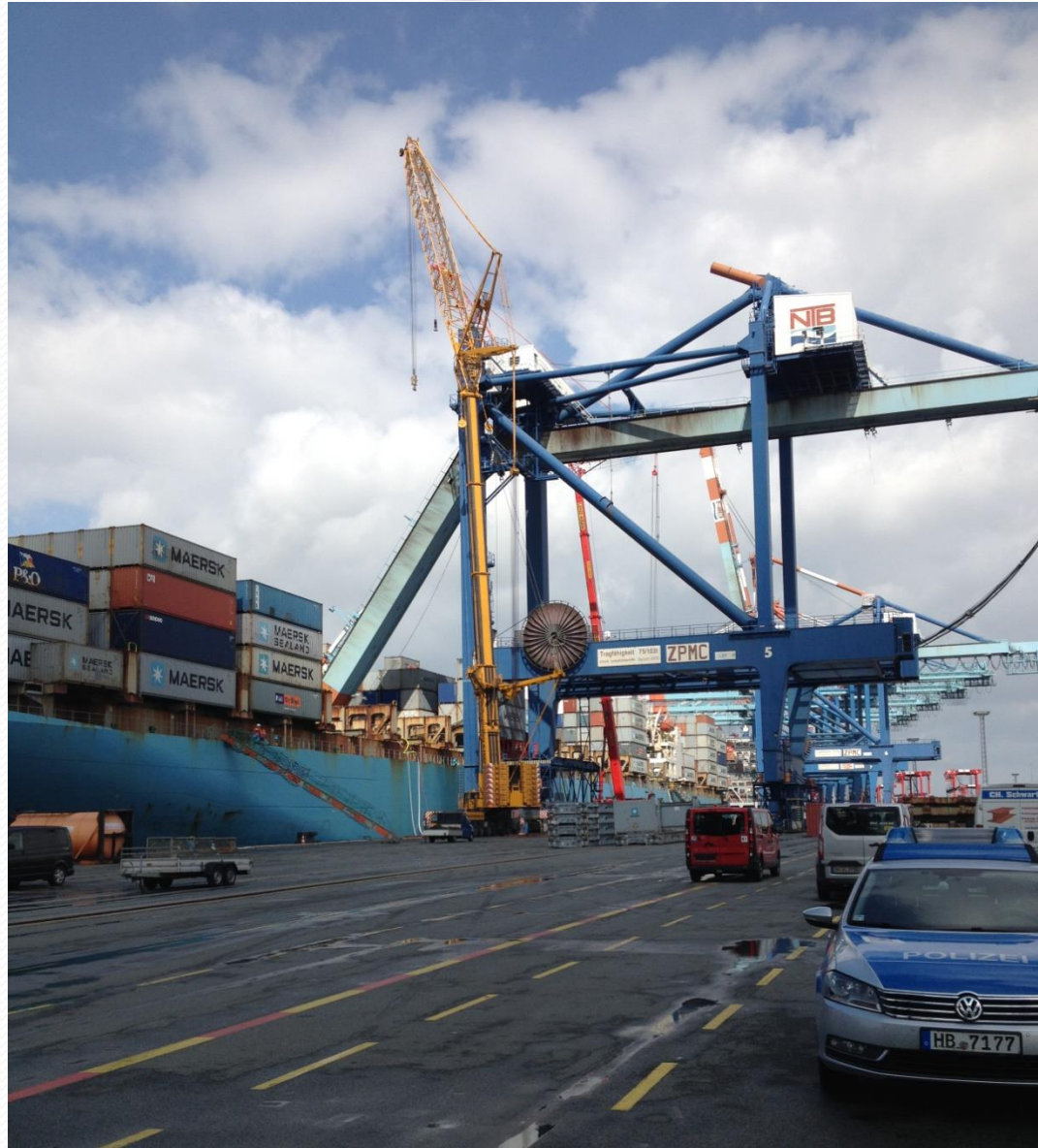


Place of Refuge

versus Waste Law

**Waste handling
in the Port of Refuge,
examples**

2. Maersk Karachi



Place of Refuge versus Waste Law

2. Maersk Karachi - Brief History –

- 13th May 2015: Arrival Bremerhaven
- 14th May: Gantry crane-Accident
- 22nd May: Fire during gantry-recovery
- 23rd May: Fire off
- 17th July: Fire-fighting-water discharged
- 1st Aug.: Continuing discharge-operations
- 3rd Oct.: Cargo discharged
- 5th Feb. 2016: Waste disposal completed



Source: HBH

Place of Refuge versus Waste Law

2. Maersk Karachi

- 15.000 m³ fire fighting water
- 15.000 m² port area for waste handling
- 11.209 t waste (6.089 hazardous, 4.000 liquid incl. rain- and cleaning-water)
- Permission for waste handling necessary
- Stakeholders / operators need time
- Port must be able
- Waste authority must have the capacity to conduct



Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, examples



3. MSC Zoe

Place of Refuge versus Waste Law

Waste handling in the Port of Refuge, examples

3. MSC Zoe - Brief History –

- L: 396m, 8.000 cont. o/b; voyage from P to GER
- 1st Jan. 2019: Loss of 345 cont. in storm off NL and GER coast
- 2nd Jan.: Bremerhaven



- 220 m³ cargo residues washed ashore of german islands
- 16th Jan.: Discharging completed

Place of Refuge versus Waste Law

• Cargo as waste

Kopie WSP

Hansestadt Bremsches Hafenamnt
Hafenkapitän

Hansestadt Bremsches Hafenamnt
Steubenstraße 7a, 27568 Bremerhaven

Kapitän / Eigner
MS „MSC ZOE“

Persönliche Übergabe

 Freie
Hansestadt
Bremen

Auskunft erteilt
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T (04 7 7) 5 96 13 400
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E-mail
Andreas.Mai@fhh.bremen.de
Datum und / oder
Ihros Schreibens

Uwe Zehren
(Bitte im Antwort angeben)
1-504-3033
MMSGH

Bremerhaven, 03. Januar 2019

Behördliche Verfügung zur Gefahrenbeseitigung an Bord MS „MSC ZOE“

Auf der Grundlage von § 6 Abs. 1 Nr. 8 in Verbindung mit § 5 Abs. 4 Bremsches Hafenebetriebsgesetz vom 24.11.2000 zuletzt geändert am 01.03.2013 (BremGBI S. 85) wird nachstehende Verfügung zur Bearbeitung der Schadenslage auf und an dem MS „MSC ZOE“ (Länge: 395,46 m, Breite: 59,08 m, BRZ: 192237, IMO-Nr. 9703318) erlassen:

- 1.) Der Hafenbehörde ist ein Plan zur Entladung des Schiffes vorzulegen. Für die einzelnen operativen Maßnahmen ist die Stabilität des Schiffes gegenüber der Hafenbehörde nachzuweisen. Auf Verlangen ist die Stabilitätsberechnung durch einen öffentlich bestellten Sachverständigen oder die Klassifikationsgesellschaft des Schiffes nachzuweisen.
- 2.) Insbesondere muss der Plan Angaben zu vorgesehenen Zeiten, Behandlung, Lagerung und dem Abtransport der an Bord befindlichen Ladung einschliesslich evtl. Abfälle und kontaminierter Stoffe enthalten.
- 3.) Der Plan ist den aktuellen Gegebenheiten entsprechend fortzuschreiben, daraus folgende Änderungen sind der Hafenbehörde unverzüglich mitzuteilen.
- 4.) Es ist die Zustimmung des Hafenanlagenbetreibers zu den geplanten Maßnahmen vorzulegen, soweit die Nutzung der Hafenanlage betroffen ist.
- 5.) Soweit Abfälle vom Schiff an Land verbracht werden müssen und der Hafenanlagenbetreiber zugestimmt hat, dürfen diese umgeschlagen, um Zuge der Bereitstellung zwischengelagert und behandelt werden, wenn dies im Rahmen der Gefahrenabwehr erforderlich ist und gefahrlos durchgeführt werden kann.
- 6.) Bereitstellungsflächen sind so herzutreiben oder zu wählen, dass eine Verunreinigung von Boden, Luft und Wasser vermieden wird.
- 7.) Die Abfälle sind schnellstmöglich einer ordnungsgemäßen Entsorgung zuzuführen. Einzelheiten sind vorab mit der Abfallbehörde des Senators für Umwelt, Bau und Verkehr abzustimmen.

Behördenadresse:
BREMENSCHES HAFENKAPITÄN
Steubenstraße 7a
27568 Bremerhaven

Telefon (0471) 596 13 (Auskunft)

Bankverbindung:
NORIPA, BIC: 250 500 00, CO: 10701-5500
IBAN: DE 27 2306 0001 0701 1603 00 0000 0000 0000 0000 0000 0000
Deutsche Bank AG, BIC: 250 500 00, CO: 10701-5500
IBAN: DE 25 2200 0000 0000 0000 0000 0000 0000 0000 0000 0000 0000
Sparkasse Bremen, BIC: 250 501 01, CO: 1080655
IBAN: DE 43 2506 0000 0000 0000 0000 0000 0000 0000 0000 0000 0000

- 8.) Durch Bankbürgschaft oder vergleichbare Erklärungen des Reeders/Versicherers ist sicherzustellen, dass alle möglicherweise anfallenden Kosten, auch die der Abfallentsorgung, durch den Eigner des Schiffes beglichen werden.
- 9.) Nach Entladung des Schiffes sind unverzüglich, die Reparaturen zur Wiedererlangung der Seetüchtigkeit des Schiffes zu veranlassen.
10. Sollen im Rahmen von Arbeiten bei der Bergung der Ladung oder Reparaturarbeiten ausgeführt werden, die ein Schweißen oder Brennen oder andere Heißarbeiten erforderlich machen, ist die entsprechende Genehmigung der Hafenbehörde im Vorhinein einzuholen.
11. Die Weisungen der Mitarbeiter des Hafenamtes sind unverzüglich zu befolgen.
12. Vor dem Beginn der Arbeiten ist ein Arbeitssicherheitskonzept vorzulegen, dass ggfls. mit dem Gewerbeaufsichtsamt abzustimmen ist.

Begründung

Das Schiff hat nach einer schweren Havarie den Hafen von Bremerhaven angelaufen. Zur Feststellung und Beseitigung dieser Schäden ist die Ladung unverzüglich zu löschen und eine Reparatur des Schiffes zur Vermeidung von Schäden für Mensch und Umwelt durchzuführen. Die Anordnungen dienen zur Abwehr von Gefahren, die sich aus dem Anlaufen von havarierten Schiffen im Hafenbereich ergeben können. Dabei muss es möglich sein, lageabhängig weitere Auflagen zu erteilen oder bestehende Bestimmungen abzuändern oder aufzuheben oder weitere Bestimmungen zu erlassen.

Hinweis

Diese Verfügung ersetzt keine nach anderen Rechtsvorschriften notwendig werdenden Erlaubnisse oder Genehmigungen.

Rechtsbehelfsbelehrung

Gegen diese Befreiung kann innerhalb eines Monats nach ihrer Bekanntgabe Widerspruch erhoben werden. Ein Widerspruch ist schriftlich oder zur Niederschrift beim Hansestadt Bremschen Hafenamnt, Hafenkapitän, Steubenstraße 7a, 27568 Bremerhaven, zu erheben.

Gebührenfestsetzung

Diese Genehmigung ist gebührenpflichtig. Für die Erteilung wird nach dem Bremschen Gebühren- und Beitragsgesetz vom 16. Juli 1979 (Brem. GBl. S. 279-203-b-1) und der Ziffer 800.00 des Kostenverzeichnisses der Kostenverordnung der Verwaltung Wirtschaft und Häfen (WuHKostV) vom 04. September 2002 (Brem. GBl. Nr. 54 S. 511) in der Fassung vom 28. September 2004 (Brem. GBl. Nr. 52 S. 503) eine Gebühr in Höhe von € 500,00 festgesetzt.

Eine Rechnung ist Bestandteil dieser Genehmigung und geht Ihnen in Kürze zu.

gez. Mai

A. Mai

Hafenkapitän

Place of Refuge versus Waste Law

Cargo as waste

Discharging and Salvage Concept

- Is developed by a professional and approved surveyor
- Has to be appointed by the responsible port authority

Contents:

- The conducting terminal operator and stevedores
- Time of operation-start and planned shifts
- Explicit containers by bay and row of vessel
- Restowage and discharging plan
- Protection area (horizontal and vertical) on deck with flatracks and 40' cont at outermost position (land and sea)
- Mobile crane with man-basket on stand-by for possible support

Place of Refuge versus Waste Law

Cargo as waste

Discharging and Salvage Concept (cont.)

- First closed cont. without risk of cargo loss/leakage to be discharged
- Loose, scattered cargo from damaged/collapsed containers to be collected and disposed into waste bins/containers
- No hotworks, if required cutting works conducted by means of hydro-jet technique
- Special measures for damaged DG-containers leakages
- Personal protection equipment of workers and other safety aspects like ignition-sources and non-arcing tools (e.g. plastic shovels)

Place of Refuge versus Waste Law

Summary

- Waste handling in the Port of Refuge takes time and costs money
- Port of Refuge Management is necessary
- In Germany up to 40 different authorities involved (HK, March 2017)
- 16 cases (2005-2017) of access/order to PoR by Central Command for Maritime Emergencies Germany



Place of Refuge

Do You know
this vessels
name?

versus Waste Law

End