



**MARINE SALVAGE:**  
**REINFORCING POLLUTION DEFENCE IN EU WATERS**

**□ INTRODUCTION**

1. This paper has been prepared by the International Salvage Union (ISU), an association of companies engaged in marine salvage. The ISU has 53 members in 29 countries. Each company meets criteria which, collectively, define the professional salvor. ISU salvors are responsible for over 90% of marine salvage activity worldwide.
2. ISU salvors have the expertise and resources required for the efficient performance of salvage. Member salvors provide a wide range of vital marine emergency services, including ship casualty response, pollution prevention and wreck removal. Around half the ISU membership is located within the EU and in neighbouring countries. Beyond emergency services, they also provide many other marine services – such as harbour towage and offshore support – which are of crucial importance to the EU economy.
3. The most effective way to prevent damage to the marine environment, when ships run into trouble, is immediate and decisive intervention by marine salvage professionals. **Whilst new EU regulatory measures have been introduced since the disastrous “ERIKA” and “PRESTIGE” spills, EU regulators have yet to recognise the full significance of salvage as Europe’s first line of defence against catastrophic pollution.**
4. Expert salvage teams, held at 24/7 readiness, protect the environment when ships get into difficulties. **The salvor’s main mission is to keep the pollutant in the ship.** Even when an accident has already resulted in a spill, an experienced Salvage Master and his team can often do much to limit the scale of the damage.
5. Prevention is better than cure. The appropriate emphasis today is “Preventive Response”, through salvage. This is the most effective way to defend the marine environment. **If preventive response is neglected, with investment in spill clean-up capability alone, the effect is to heighten the risk of another ‘PRESTIGE’.** The chances of further catastrophic spills are increased.
6. Two factors led to the conclusion in (5):
  - a. **In the main, spill clean-up is not very successful. Typically, much less than 10% of oil spilt is recovered, regardless of the expense and efforts made. In contrast, the marine salvor is often 100% successful in preventing pollution – by keeping the oil in the ship.**
  - b. Over the past quarter century a series of major spills in EU waters and elsewhere in the world has produced successive rounds of new regulations concerning, inter alia, safety

management, crew quality, manning standards and ship inspection. Today, however, the regulatory response has entered the realms of diminishing returns. The number of severe oil spills has fallen from over 20 annually in the 1970s to three or four annually in the current decade. However, marine accidents cannot be entirely eradicated, due to the natural perils of the sea and the element of human error. **Further regulation is unlikely to further reduce such a low level of major threats. Therefore, the key to reducing the risk of further catastrophic spills in EU waters is to reinforce preventive response by marine salvors.**

7. This paper makes the case for the inclusion, in the Union's Future Maritime Policy, of a strategy for salvage-based environmental defence in EU waters. The measures proposed by the ISU, when taken together, would make a major contribution to the development of an effective environmental shield, better protecting EU waters from the ravages of pollution from ship casualties.

#### **□ THE CASE FOR REINFORCING SALVAGE CAPABILITY IN EU WATERS**

8. Any strategy for sustainable maritime development must address the issue of what more can be done to defend Europe's coastline against more pollution disasters. Any vision of Europe's maritime future should confront the unpleasant realities:
  - i. **The world's 20 worst spills over the past four decades resulted in the loss of 2.5 million tonnes of oil. Over half of these accidents happened in European waters.**
  - ii. The consequent release of one million tonnes of oil devastated coastal communities in France, Spain, the UK and other EU member states. **The scale of damage would have been far worse but for intervention by ISU salvors.**
9. ISU salvors have performed more than 5,000 salvage operations in all parts of the world over the past 30 years. Since 1994, when pollution-related data was first collated, ISU salvors have recovered over 12.6 million tonnes of oils, chemicals and other liquid pollutants from more than 2,000 ship casualties. **This figure includes around 10 million tonnes of crude oil – the equivalent of 130 spills of 'PRESTIGE' size.**
10. The 'PRESTIGE' case demonstrates the cost-effectiveness of salvage over spill clean-up. In the case of the 'PRESTIGE', refuge was denied. The vessel subsequently broke up, with the loss of the entire cargo. The cost of this spill catastrophe is estimated at between €1 billion and €1.5 billion. Had the tanker been granted a refuge some pollution damage would still have occurred, but on a far more modest scale. Salvage could have been performed successfully at a sheltered location, with all the remaining cargo safely transhipped. The cost of salvage would have been no more than €15 million, with a limited clean-up adding around €30 million.
11. Under the Lloyd's Form salvage contract, salvors are obliged to use their "best endeavours" to prevent or minimise damage to the environment. **The failure to grant shelter for the 'PRESTIGE' did not allow the salvor to save the ship and turned a €45 million accident into a €1.0-1.5 billion catastrophe.**

12. The recommendations set out in this paper are designed to minimise the possibility of another ‘PRESTIGE’ disaster in EU waters. The recommendations call for investment in salvage as the primary means of defence against marine pollution. **If implemented, these measures would position the EU as a global model for best practice in marine spill defence.** In doing so, it would give the lead to the International Maritime Organization.

**AN ENVIRONMENTAL SHIELD FOR EU WATERS**

13. The ISU proposes that the EU’s Future Maritime Policy should include a 10-point Action Plan for Spill Risk Reduction in EU waters. There are two sets of measures, one creating a framework for more effective marine emergency response and a second set of initiatives to enhance operational issues. The EU’s environmental shield against ship-source pollution would comprise:

- **A framework for more effective marine emergency response.**
  - i. **Recognition of salvage as Europe’s first line of defence against marine pollution:** EMSA has already taken action to reinforce EU capacity to respond to a major marine spill, by increasing clean-up resources available for use in European waters. However, spill clean-up is difficult and costly. The results are almost always disappointing – commonly less than 10% of the oil is recovered. For this reason, EMSA should make a parallel commitment to marine salvage – through arrangements with commercial salvors – as the primary means of defending European waters from marine pollution. This should be a cornerstone of the EU’s Future Maritime Policy, so recognising the principle that the best defence is to keep the pollutant in the ship.
  - ii. **Environmental Awards:** there should be an urgent review of the centuries-old procedures used to reward salvors. The historic system is based on a proportion of “salved value” – a share (typically 5-6%) in the value of ship and cargo recovered. This takes little or no account of the value of environmental services – the prevention of pollution through the act of salvage. The ISU suggests that the traditional system of Salvage Awards for the recovery of property should be complemented by an Environmental Award whenever the risk of pollution is prevented, or minimised. In London, Lloyd’s recently agreed to establish a committee to examine these proposals. On the matter of funding Environmental Awards, the ISU has proposed that Coastal States should assume this responsibility initially, later recovering costs from the appropriate international pollution compensation fund or funds, which have been established under International Maritime Organization conventions. This is a long-established procedure, followed for the recovery of clean-up and compensation costs after a marine spill. The EU’s Future Maritime Policy should take the lead here, by introducing a European Fund for Environmental Awards, rewarding salvors who succeed in preventing or minimising the risk of pollution in EU Coastal Zones. This would increase the level of protection available to EU Coastal States and stimulate the adoption of such an approach at the global level.
  - iii. **Supporting coastal communities providing places of refuge:** in many salvage operations there is a need to identify a suitable place of refuge, in order to bring salvage services to a successful conclusion and so prevent the escape of pollutants. Those coastal communities required to assume greater levels of environmental risk, in the national and

*international* interest, need to be both compensated and rewarded for assuming this burden. Beyond rewarding salvors who prevent pollution, an EU Fund for Environmental Awards could also be employed to reward front line coastal communities suffering damage as a result of providing refuge.

- iv (i) **Responder Immunity for Civil Liability:** The IMO's Bunker Spill Convention is gradually being adopted by various states and the necessary condition for entry into force is fast approaching. Unfortunately, unlike the CLC and HNS Conventions, this convention does not provide the salvor with protection from third party claims. Whilst salvors should remain potentially liable to the shipowner if they are at fault, they should be protected from third party claims which can involve speculative litigation in a variety of jurisdictions tying up the salvors resources. This lack of protection, which is afforded to the salvor in other conventions, is a deterrent to the salvor attending a casualty. Fortunately a solution is possible. The Convention specifically recommends States to grant this immunity when enacting the convention. The UK draft legislation enacting the convention gives this immunity and the ISU urges the EU to direct other EU members to do likewise.
- (ii). **Responder Immunity for Criminal Liability:-** The EU Directive on Ship Source Pollution exposes salvors to prosecution and criminal liability, should a spill occur during a salvage operation. This is a very significant issue as most salvage operations today begin with the removal of bunkers, in order to reduce the pollution threat. Clearly, lack of responder immunity could deter a salvor from becoming involved. The EU's Future Maritime Policy should state clearly that salvors will not be prosecuted when attempting to prevent pollution in EU waters. Salvors should not be exposed to "criminalisation" and the threat of seizure of personnel, vessels and equipment when going to the assistance of ships in distress."
- v. **Recognition of professional salvors:** ISU salvors are the repository of the expertise and specialised vessels and equipment required to perform salvage and prevent pollution. Salvors who wish to become members of the ISU are required to demonstrate that they have the experience and resources to perform salvage and prevent environmental damage, so fulfilling obligations under Lloyd's Form and the Salvage Convention 1989.
- **Initiatives to enhance the performance of salvage and pollution prevention**
- vi **Best practice for marine casualty management:** the ISU fully supports the IMO's introduction of International Guidelines on Places of Refuge and, indeed, the EU initiatives requiring member states to take action to ensure that ship casualties have access to refuge in emergency situations. In addition, the ISU is now working with MSUO (Maritime Safety Umbrella Operation) and EMSA to draw up wider Casualty Management Guidelines. The current IMO refuge guidelines are too narrowly focused. There is an urgent need for new and broader-based guidelines providing a best practice model for *all aspects of marine casualty management*. Drafting work will begin in 2007. If the EU adopted best practice for casualty management, it would greatly increase the likelihood of the IMO accepting the case for more comprehensive guidelines in this critical area.
- vii **Standby salvage services to protect heavily trafficked and vulnerable Coastal Zones:** in a 21st Century society with zero tolerance of marine spills, it is increasingly difficult to justify continued heavy reliance on a "tug of opportunity", to be in the right place, at the

right time. This point is already recognised in many EU member states. They have made arrangements with commercial salvors to provide a guaranteed level of protection in busy and environmentally sensitive areas. The EU should take the initiative to formalise such arrangements, with the aim of ensuring that standby salvage tugs provide a guaranteed level of protection in all EU Coastal Zones.

- vii **Real-time monitoring of tug availability:** speed of response is essential when faced with a marine emergency and pollution threat. Although some stretches of the EU coastline are already covered by retained salvage tugs held on standby, too much is still left to chance. The ability to prevent a grounding and catastrophic spill might well depend entirely on the chance availability of a “tug of opportunity”, which just happens to be in the area and is able to intervene quickly enough to prevent a disaster. Given the capabilities of advanced IT and satellite communications, it is entirely possible to establish a system of real-time monitoring of tug status and availability throughout EU coastal waters. This would provide virtually instant access to data on the proximity and capabilities of those salvage units nearest to the casualty.
- ix **Building an EU Marine Salvage Inventory:** The first few hours of a response often have a crucial influence on the eventual outcome. Response efficiency could be enhanced by requiring all member states to contribute information on salvage vessels and equipment available for immediate deployment. An EU Marine Salvage Inventory would make it easier to match mobilisation of assets to scale of threat – including assets held by neighbouring member states.
- x **Preparedness:** the ISU has long recognised the importance of full cooperation between salvor and Coastal State, to maximise the likelihood of successful salvage and pollution prevention. Response efficiency would be enhanced if initiatives were taken to expand EU programmes for annual casualty response exercises in all EU Coastal Zones, involving both Coastal State agencies and commercial salvors. Should proposals for a European Coastguard progress over the next decade, the ISU is in a unique position to advise on this and all other aspects of cooperation for timely and decisive casualty response.

**In the view of the ISU, the above measures, if included in EU Future Maritime Policy, would strengthen Europe’s Environmental Shield.**

**ISU: December 2006**

---000---