

GUIDANCE

**Reference:
NP-GUI-018**

NATIONAL PLAN

NATIONAL MARITIME PLACES OF REFUGE RISK ASSESSMENT GUIDANCE



Endorsed by the NPSCC November 2015

Version	Action	Authorised by	Date of Authorisation
0	AMSA/AAPMA sponsored Safe Havens and Salvage Workshop recommended development of Place of Refuge (POR) Guidelines for Australia.		Sydney, 19-20 March 2002
1	National Maritime Place of Refuge Risk Assessment Guidelines developed by National Plan Management Committee.	Australian Transport Council	23 May 2003
2	POR Guidelines revised by the National Plan Management Committee on 26 March 2007: to ensure consistency with IMO Resolution A.949(23) entitled "Guidelines on Places of Refuge for Ships in Need of Assistance"; and, to reflect the <i>Protection of the Sea (Powers of Intervention) Act 1981</i> (Cth) and a number of amendments identified following the use of the Guidelines during desktop training exercises.	Australian Transport Council	2009
3	POR Guidelines reviewed by the Marine Pollution Prevention Technical Group to ensure consistency with the revised National Plan for Maritime Environmental Emergencies and to reflect changes necessary with the introduction of the <i>Navigation Act 2012</i> and the <i>Marine Safety (Domestic Commercial Vessels) National Law Act 2012</i> .	Transport and Infrastructure Council	2013
4	POR Guidelines reviewed in consultation with the Marine Pollution Prevention Technical Group	National Plan Marine Pollution Prevention Technical Working Group	November 2014
5	POR Guidelines reviewed by National Plan Strategic Industry Advisory Forum (NPSIAF) and National Plan Strategic Coordination Committee (NPSCC).	NPSIAF and NPSCC	September 2015
6	Document amended to 'Guidance' National Maritime Places of Refuge Guidance formally endorsed by the NPSIAF and NPSCC	NPSIAF and NPSCC	November 2015

CONTENTS

1. Introduction	1
1.1 Purpose	1
1.2 Application	1
1.3 Definitions	2
1.4 Internal, Port, Coastal (State) and Commonwealth Waters and Maritime Zones	4
1.5 Circumstances in which a vessel may seek a Place of Refuge	4
1.6 Why provide a Place of Refuge?	4
2. Requests for a Place of Refuge	5
2.1 Request process for a Place of Refuge	5
2.2 Authority to assess and grant a Place of Refuge	5
2.3 Maritime Emergency Response Commander (MERCOCM)	5
2.4 State and Northern Territory Governments	5
2.5 Deciding to grant a Place of Refuge	6
2.6 Decision making processes	7
2.7 Implications of refusing a Place of Refuge request	8
3. Management Issues	8
3.1 Handover process between jurisdictions	8
4. Powers of Intervention of the Commonwealth and the States/ Northern Territory in directing a vessel to a place of refuge	9
4.1 Background	9
4.2 Measures available under the Intervention Convention and the <i>Protection of the Sea (Powers of Intervention) Act 1981</i>	9
4.3 Liability and compensation	10
4.4 Indemnity or letter of undertaking	10
5. Amendment process	11
6. Appendices	11
Appendix A Initial information to be supplied with a place of refuge request	12
Appendix B Guideline for risk-based assessment for a Place of Refuge	14
Appendix C Pro Forma for a Directions Notice Issued Under Commonwealth / State / NT Intervention Legislation	18
Appendix D Step by step Place of Refuge Assessment Guidance	19
Appendix E Pro Forma for Transfer and Acceptance of Coordination for a Maritime Casualty or Place of Refuge Request between Commonwealth / State / NT Agencies	21
Appendix F Template for Letter of Undertaking by P&I Club in Relation to a Ship Seeking Entry to a Place of Refuge	22

1. INTRODUCTION

When dealing with vessels in distress or in need of assistance there is, at times, a requirement to find an appropriate location where necessary steps can be taken to prevent an escalation of events, stabilise the current situation and take action as required to effect repairs or a salvage operation.

Australia's interests and obligations in relation to vessels in distress and vessels in need of assistance arise primarily from the International Convention for the Safety of Life at Sea (SOLAS), United Nations Convention on the Law of the Sea (UNCLOS), *International Convention on Maritime Search and Rescue* (SAR Convention), International Convention On Salvage, and a range of International Maritime Organization (IMO) Resolutions.

Whilst maintaining the right to regulate entry into its ports and protect its coastline and marine resources from pollution, Australia has an obligation to provide a Place of Refuge where circumstances allow. For this reason, the decision whether to provide a Place of Refuge must be made only after consideration of the national interest, including all potential impacts balanced by pre-existing obligations to those in need of assistance.

This Guidance has been prepared recognising that there is a clear separation in responsibility between maritime security and maritime safety. They complement IMO Resolution A949 (23) "Guidelines on Places of Refuge for Ships in Need of Assistance" (IMO Guidelines).

1.1 Purpose

1.1.1 The purpose of this Guidance is to provide the Commonwealth and States/Northern Territory with guidance that will inform and expedite the decision making process in determination and allocation of a Place of Refuge. They are designed to ensure that:

- a need for a Place of Refuge exists;
- there is adequate and timely consultation between all stakeholders during an incident;
- all risk associated with the decision is identified and, where practical, addressed; and
- a consistent and thorough process is adopted in identifying a Place of Refuge.

1.2 Application

1.2.1 This Guidance applies to a request for a Place of Refuge by a vessel located within Australia's internal waters, territorial sea, exclusive economic zone, or, where relevant, on the high seas.

1.2.2 However, the Royal Australian Navy (RAN) is responsible for determining Australia's response to a maritime casualty and/or a place of refuge request involving either a domestic or foreign warship. Therefore, in circumstances where such a ship requests a Place of Refuge, the request should be formally made through the Department of Defence and/or the Department of Foreign Affairs and Trade.

1.2.3 This Guidance is complementary to, and should be read in conjunction with, existing applicable State and Northern Territory guidelines.

1.2.4 This Guidance should be applied at all times in a manner consistent with the principles of international law, in particular, those laws relating to the balance of interests between a vessel in need of assistance and Australia's national interests in accordance with Appendix 2, paragraph 2 of Resolution A.949(23) IMO Guidelines on Places of Refuge for Ships in need of assistance

1.2.5 This Guidance:

- is voluntary;
- is flexible to take into account the wide variety of circumstances that might arise;
- allow for case-by-case analysis and application; and
- seek to enhance a cooperative and consensus approach between all parties; and
- use terminology defined in the following section.

1.3 Definitions

1.3.1 **AMSA** is the Australian Maritime Safety Authority, as established by the *Australian Maritime Safety Authority Act 1990*.

1.3.2 **Coastal Waters**, in relation to a State or the Northern Territory, means the territorial sea to an outer limit of 3 nautical miles from Australia’s baselines and any waters that are on the landward side of the baselines, including waters not within the limits of State or Territory.

1.3.3 **Commonwealth Waters** are the waters from the seaward boundary of Coastal Waters to the outer edge of the EEZ.

1.3.4 **Control agency** means the agency assigned by legislation, administrative arrangements or within the relevant contingency plan, to control response activities to a maritime environmental emergency.

1.3.5 **Exclusive economic zone (EEZ)** is an area beyond and adjacent to the territorial sea, subject to a specific legal regime established under the United Nations Convention on the Law of the Sea (UNCLOS), under which the rights and jurisdiction of the coastal State and the rights and freedoms of other States are primarily governed by the relevant provisions of UNCLOS.

1.3.6 **Force majeure** is a force or event beyond reasonable human control, such as storms and cyclones

1.3.7 **Incident** means an event, occurrence or set of circumstances that:

- Has a definite spatial extent,
- Has a definite duration,
- Calls for human intervention,
- Has a set of concluding conditions that can be defined,
- Is, or will be, under the control of an Incident Controller appointed to make decisions to control and coordinate the approach, means and actions taken to resolve the incident.

1.3.8 **Incident Controller** means the individual responsible for the management of all incident control activities across an incident. For significant incidents where the MERCOT has assumed control, it does not preclude providing for multiple incident management teams for specific hazards or impacts. In such a circumstance, it is consistent with the principles of the Australasian Interservice Incident Management System (AIIMS), to appoint one incident controller for each such hazard or impact.

1.3.9 **Internal waters** means those waters of States that are on the landside of the territorial sea baseline. The waters which are capable of falling within constitutional limits are described in Section 14 of the *Seas and Submerged Lands Act 1973* as ‘bays, gulfs, estuaries, rivers, creeks, inlets, ports or harbours which were, on 1 January 1901, within the limits of a State and remain within the limits of a State’.

1.3.10 **Marine Casualty Officer (MCO)** is an appointed officer of AMSA who has the relevant training and experience required to inform and assist the MERCOT and/or the State/Northern Territory Incident Controller in their management of a maritime casualty. The MCO role is often conducted from on board a vessel in need of assistance and includes informing the incident managers of actions proposed or undertaken by the vessel master or salvor.

- 1.3.11 **Marine pollution** refers to any occurrence or series of events including fire and explosion, which results or may result in discharge, release or emission of oil or hazardous and noxious substance, which poses or may pose a threat to the marine environment, the coastline, animals or other resource, and which requires an emergency action or immediate response. Under the National Plan, marine pollution refers primarily to situations that may arise from shore based oil and chemical transfer facilities, shipping operations and/or the operation of an offshore petroleum facility¹.
- 1.3.12 **Maritime casualty** means a collision of vessels, stranding or other incident of navigation, or other occurrence on board a vessel or external to it resulting in material damage or imminent threat of material damage to the vessel, its cargo, or persons aboard the vessel.
- 1.3.13 **Maritime Emergency Response Commander (MERCOCM)** is appointed by the Chief Executive Officer of AMSA and is delegated a range of statutory powers under the *Protection of the Sea (Powers of Intervention) Act 1981*. The MERCOCM is responsible for the management of emergency interventions of maritime casualty incidents (through prevention, mitigation and/or elimination of damage) where there is an actual or potential risk of significant pollution. By agreement the MERCOCM is primarily responsible for the management of maritime incidents occurring beyond State/Northern Territory coastal waters and port limits. The MERCOCM has the power to take action in the event of an incident occurring within State/Northern Territory coastal waters or internal waters if it is considered that such action will serve the national interest.
- 1.3.14 **National Plan supporting documents** means documents which have been developed and agreed by the relevant Committees of the National Plan for Maritime Environmental Emergencies to help ensure a standard response to maritime environmental emergencies.
- 1.3.15 **Place of refuge (POR)** means a place where a ship in need of assistance can take action to enable it to stabilise its condition and reduce hazards to navigation, and to protect human life and the environment.
- 1.3.16 **Port Authority**, depending on jurisdiction, may refer to an agency of a State or Northern Territory, a State corporation or private company.
- 1.3.17 **Port** is an area of water, or land and water (including any buildings installations or equipment situated in or on that land or water) intended for use either wholly or partly in connection with the movement, loading, unloading, maintenance or provisioning of vessels and includes:
- a) “areas of water, between the land of the port and the open waters outside the port, intended for use by vessels to gain access to loading, unloading or other land-based facilities; and
 - b) areas of open water intended for anchoring or otherwise holding vessels before they enter areas of water described in paragraph (a); and
 - c) areas of open water between the areas of water described in paragraphs (a) and (b).”
- 1.3.18 **Vessel** means any kind of vessel used in navigation by water, however propelled or moved.

¹ As per National Plan definition. Note: Places of Refuge Guidance is not applicable to operating petroleum facilities.

1.4 Internal, Port, Coastal (State) and Commonwealth Waters and Maritime Zones

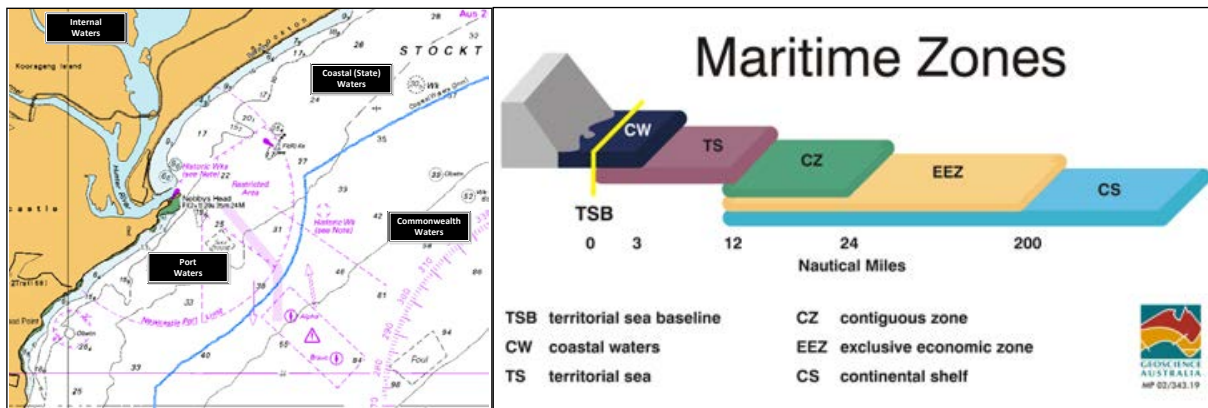


Figure 1 – Chart demonstrating Internal, Port, Coastal (State) and Commonwealth Waters (left) and a diagram explaining the various Maritime Zones (right)

1.5 Circumstances in which a vessel may seek a Place of Refuge

1.5.1 At the discretion of the vessel's master, access to a place of refuge may be sought in circumstances including a maritime casualty force majeure or distress situation or some other operational situation which creates:

- a risk to the safety of the vessel or that of its crew and/or passengers;
- a threat to the marine environment or other property.

1.6 Why provide a Place of Refuge?

1.6.1 Reasons for providing a place of refuge include protecting:

- the safety of the vessel's crew, passengers and salvage crew;
- the safety of human life and health within the immediate vicinity of the distressed vessel;
- ecological and cultural resources, and the marine, coastal and terrestrial environments;
- the safety of the vessel and its cargo; and
- economic and socio-economic infrastructure, including sensitive installations, within the coastal zone and ports.

1.6.2 However, there is no international requirement for a country to provide a Place of Refuge for a vessel in distress. Thus, when considering a Place of Refuge request, Australia, like most other maritime administrations, is faced with the need to balance several competing factors including:

- (a) the long-established humanitarian right of a ship in distress to seek a Place of Refuge for the purpose of saving lives, overcoming the distress and carrying out repairs. Any type of ship, including warships, may invoke this right, provided there is a genuine need. The right is limited by its purpose – to overcome the distress by seeking shelter, carrying out the necessary repairs, etc.
- (b) the obligation of Australia to render assistance to a ship in (see for example SOLAS Chapter V and the SAR Convention, Chapter 2).
- (c) the right of Australia to refuse, regulate, and place conditions on, entry into its ports reflected in Articles 2 and 25(2) of UNCLOS.
- (d) the right of Australia to protect its coastlines and marine resources from pollution or the threat of pollution (see UNCLOS, Articles 194, 195, 198, 199, 211, 221 and 225).

2. Requests for a Place of Refuge

2.1 Request process for a Place of Refuge

- 2.1.1 Request for access to a Place of Refuge may be received from the master or person in charge of a vessel, the vessel's agent, owner, operator or appointed salvor. It is recognised that at times, requests for a Place of Refuge could be made by other interested parties, such as the relevant State or Northern Territory agency, port authority or harbour master.
- 2.1.2 All Place of Refuge requests should, so far as practically possible, be made through AMSA's Rescue Coordination Centre (JRCC Australia).
- 2.1.3 When making a request for a place of refuge, as much relevant information as possible should accompany the request to assist the relevant authority in their assessment. A list of initial information to be supplied is included at Appendix A.

2.2 Authority to assess and grant a Place of Refuge

- 2.2.1 State or Northern Territory government agencies or AMSA have the authority to assess and grant a Place of Refuge request from a vessel.
- 2.2.2 A Place of Refuge request for a vessel located within internal waters or coastal waters of a particular State or the Northern Territory should be assessed by the respective State or Northern Territory government agency.
- 2.2.3 A Place of Refuge request for a vessel located in any other waters, including Commonwealth Waters, waters of the external territories, waters beyond the EEZ and, in some cases, on the high seas, should be considered by AMSA. Consideration of any such request should occur in consultation with other relevant agencies, including the Great Barrier Reef Marine Park Authority for requests within the Great Barrier Reef Marine Park.

Note on Contacts:

Contact details for AMSA and State/Northern Territory government agencies which have the authority to grant a Place of Refuge for a vessel can be found within the National Plan supporting documents.

2.3 Maritime Emergency Response Commander (MERCOT)

- 2.3.1 Notwithstanding the above, under the *Protection of the Sea (Powers of Intervention) Act 1981*, the MERCOT has the authority to take any action deemed necessary with regard to maritime incidents that have or may result in pollution, including assessing Place of Refuge requests in internal or coastal waters adjacent to a State or the Northern Territory.
- 2.3.2 When considering the designation of a Place of Refuge, the MERCOT must consider the reasonable views and stated positions of the relevant State and Northern Territory governments and other stakeholders. These entities represent views about economic, environmental, community and social interests that could be impacted by the MERCOT's decisions. The MERCOT's decisions regarding a request for a Place of Refuge will be expeditiously communicated to all relevant stakeholder groups and will be fully documented.

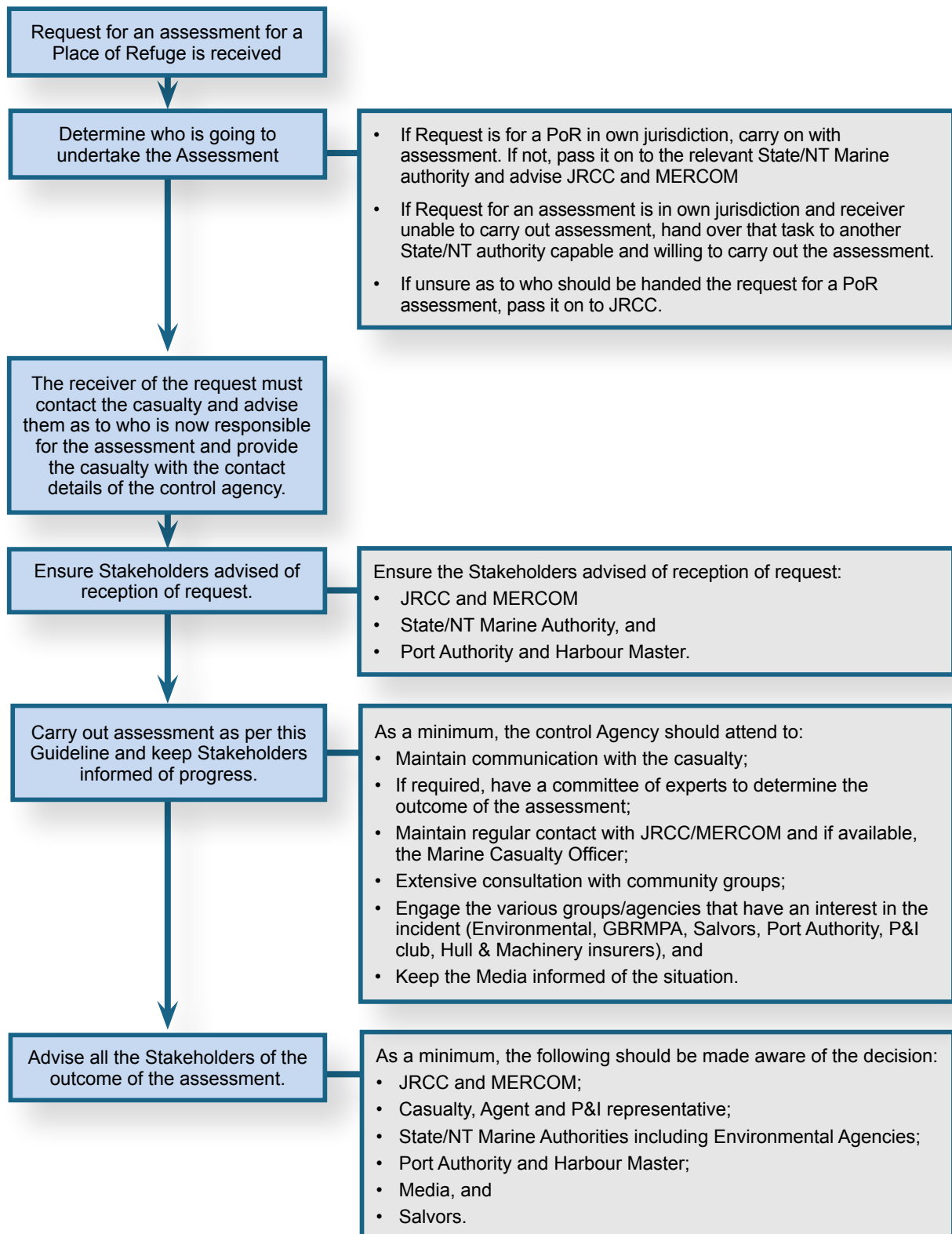
2.4 State and Northern Territory Governments

- 2.4.1 State and Northern Territory governments retain any powers they may have to respond to threats of pollution or other environmental damage that may arise as a result of an incident resulting in a request for a Place of Refuge and can exercise these powers as required. However, the MERCOT has the ability to exercise intervention powers if, in the MERCOT's opinion, such action is needed to address the threat in question.

2.5 Deciding to grant a Place of Refuge

- 2.5.1 All requests for a Place of Refuge are assessed on a case-by-case basis.
- 2.5.2 In assessing a Place of Refuge request, consideration should be given to the following options:
- the vessel remaining in the same position;
 - the vessel continuing on its voyage;
 - the vessel moving further from shore;
 - the vessel being intentionally sunk or destroyed; or
 - the vessel moving or being moved to an assigned location.
- 2.5.3 Consistent with the *Protection of the Sea Act (Powers of Intervention) 1981*, intentionally sinking or destroying a vessel can only be undertaken with the approval of the relevant Commonwealth Minister.
- 2.5.4 A risk assessment should be conducted by the agency assessing the request. This will assist in determining the most appropriate response and outcome to a request for Place of Refuge. A risk assessment model is included at Appendix B.
- 2.5.5 In assessing a Place of Refuge request, the relevant Commonwealth or State/Northern Territory agency should consult with those government agencies with responsibility for areas affected, or likely to be affected, as well as other organisations or individuals with relevant technical expertise. In the case of the Great Barrier Reef Marine Park, this includes the Great Barrier Reef Marine Park Authority, which has significant knowledge of the ecosystem as well as the cultural and heritage values of the Marine Park.
- 2.5.6 As part of the assessment process, an inspection of the vessel may be undertaken before any final decision and notification are made. An AMSA Marine Casualty Officer may be placed on board the vessel to provide advice to the MERCOM and/or the State/Northern Territory Incident Controller about on board conditions or actions and procedures either proposed or undertaken by the vessel master or a salvor.

2.6 Decision making processes



Notes on the preceding flowchart:

1. If the nominated agency is not able for any reason to undertake the assessment of a request for a place of refuge, that agency should transfer that responsibility to an appropriate agency that possesses the legislative, technical and operational capacity to do so.
2. If an agency receives a request for a place of refuge in its own area of jurisdiction, that agency is not required to relinquish responsibility for assessing the request to the Joint Rescue Coordination Centre, but should advise them that they are in receipt of that request and of their ability, or otherwise, to make an assessment of such request.

- 2.6.1 Agencies assessing a Place of Refuge request should consult with all relevant stakeholders. These should include (as a minimum): the deciding statutory agency, port authority, and other government agencies with responsibility for areas affected or likely to be affected
- 2.6.2 The decision as to whether to grant a Place of Refuge will be made by the MERCOM or nominated official of the respective State/Northern Territory after an assessment has been conducted.
- 2.6.3 Once a decision on whether to grant or refuse a Place of Refuge has been made, that decision should be immediately communicated to the vessel, to the person who made the request, and to the MERCOM via JRCC Australia.
- 2.6.4 Irrespective of the above assessment process, under the *Protection of the Sea (Powers of Intervention) Act 1981*, the MERCOM, as AMSA's delegate, has the power to direct that a specified place be treated as a Place of Refuge. This includes the power to direct a vessel to enter a particular port or location, or to direct a port authority, State/Territory agency or any person to allow use of a Place of Refuge.

2.7 Implications of refusing a Place of Refuge request

- 2.7.1 Australia's relative geographic isolation means that there are few nearby countries that could provide assistance to a vessel requesting a Place of Refuge. Consequently, in assessing a Place of Refuge request, the relevant Commonwealth or State/Northern Territory agency needs to be cognisant of the fact that a vessel may have few other options available to it when submitting such a request.
- 2.7.2 If refusing a Place of Refuge request AMSA or a State/Northern Territory agency should give consideration to alternative arrangements, consistent with Australia's international obligations, to assist a maritime casualty.

3. Management Issues

3.1 Handover process between jurisdictions

- 3.1.1 During a response to a maritime casualty and/or Place of Refuge request, there may come a time when coordination of the casualty needs to be passed to another jurisdiction. This may arise as a result of a decision to pass coordination following movement of the casualty between jurisdictions and/or the granting of a place of refuge request in another jurisdiction.
- 3.1.2 In order to clarify the transfer and acceptance of coordination of a maritime casualty or Place of Refuge request between jurisdictions, a formal handover process is required. Transfer and acceptance of coordination should be done by using the pro-forma available at Appendix E.
- 3.1.3 In assuming coordination of a maritime casualty and/or Place of Refuge request there are two components to be considered – accountability and responsibility.
 - Accountability for the overall coordination of a maritime casualty or a Place of Refuge request rests with the control agency until control is transferred to, and accepted by, another agency. This means, in the first instance, that a State/Northern Territory agency, a port authority, a harbour master, or AMSA (depending upon the circumstances prevailing at the time) may be the control agency during an incident; and
 - Responsibility for a particular activity associated with a maritime casualty or a Place of Refuge request may be delegated to another agency. In this case, the responsibility for the proper conduct of that activity rests with the agency so delegated. However, the accountability for the maritime casualty or a Place of Refuge request still remains with the agency that has control. For example, a State/Northern Territory agency may be accountable for a maritime casualty or a Place of Refuge request but may have requested that AMSA undertake a specific activity (such as liaising with the insurer). In this instance, accountability for the maritime casualty or a Place of Refuge request would remain with the State/Northern Territory agency while responsibility for the agreed delegated activity rests with AMSA.
- 3.1.4 Once a formal handover is completed, the receiving control agency assumes accountability and responsibility for all aspects of responding to a maritime casualty and/or a Place of Refuge request from the time of that handover onwards.

4. Powers of Intervention of the Commonwealth and the States/ Northern Territory in directing a vessel to a place of refuge

4.1 Background

- 4.1.1 The powers of intervention are designed to assist agencies and incident controllers in dealing with situations where the operators of a polluting, or potentially polluting, vessel are failing to demonstrate competency or compliance to best practice in attempts to remedy the condition causing or potentially causing pollution. The powers are not intended for use in a situation where operators and those in their employ are implementing appropriate measures to bring a distress or salvage incident to a successful conclusion.
- 4.1.2 Australia adopted the *International Convention Relating to Intervention on the High Seas in Cases of Oil Pollution Casualties 1969* (Intervention Convention), as amended by the Protocol of 1973 in 1984.
- 4.1.3 *The Protection of the Sea (Powers of Intervention) Act 1981* and subordinate legislation implement Australia's international obligations and provides Australia with powers to protect its interests in the EEZ and territorial sea from pollution and risk of pollution.
- 4.1.4 Most Australian States (New South Wales, Victoria, Tasmania, Queensland and South Australia) have specific legislation that deals with intervention powers in their internal and coastal waters (eg. ports and harbours). However, as provided for under the *Protection of the Sea (Powers of Intervention) Act 1981*, MERCOM can take measures in these waters if deemed necessary to protect the national interest.
- 4.1.5 A Pro Forma for Directions Notice Issued under Commonwealth or State / Northern Territory Intervention is included at Appendix C.

4.2 Measures available under the Intervention Convention and the *Protection of the Sea (Powers of Intervention) Act 1981*

- 4.2.1 For Australia to take such measures on the high seas as may be necessary to prevent, mitigate or eliminate grave and imminent danger to Australia's coastline or related interests, there has to be a 'maritime casualty' which may reasonably be expected to result in major harmful consequences (eg pollution) to Australia.
- 4.2.2 Australia can intervene where pollution is threatened 'from acts related to such a casualty, which may reasonably be expected to result in major harmful consequences', thereby enabling intervention when salvage operations go wrong.
- 4.2.3 Where Section 10 of the *Protection of the Sea (Powers of Intervention) Act 1981* applies MERCOM can intervene when oil or a noxious substance has escaped or is likely to escape whether or not there has been a maritime casualty. Section 10 will apply in a range of circumstances and guidance should be sought from AMSA to assist with understanding when it does apply.
- 4.2.4 When an incident occurs and the required intervention powers are contained in state/ Northern Territory legislation, then consideration should be given to the potential use of that legislation in the first instance.
- 4.2.5 In the event that a consensus cannot be reached between the Commonwealth and the relevant state/Northern Territory agency, the master or the salvor; Section 5 of the *Protection of the Sea (Powers of Intervention Act) 1981* (which notes that the Act applies over a direction under State/ Northern Territory law to the extent of any inconsistency) should be invoked and the decision of the MERCOM made final.
- 4.2.6 The *Protection of the Sea (Powers of Intervention) Act 1981* allows MERCOM to intervene with respect to all vessels irrespective of tonnage if such action is warranted.

- 4.2.7 Intervention may require the doing of any act or thing with respect to the vessel or its cargo, or prohibit the doing of any such act or thing and, without limiting the generality of the foregoing, may require and/or prohibit:
- (a) the movement of the all or part of the vessel, its movement to a place or area or its removal from a place or area; or
 - (b) the removal of cargo from the maritime casualty; or
 - (c) the taking of salvage measures in relation to the maritime casualty, part of the first vessel or any of the first vessel's cargo; or
 - (d) the sinking or destruction of all or part of the maritime casualty; or
 - (e) the sinking, destruction or discharging into the sea of any of the maritime casualty's cargo; or
 - (f) the handing over of control of all or part of the maritime casualty; or
 - (g) vessel to be made available for purposes in connection with unloading, receiving, treating, storing or disposing of any of the maritime casualty's cargo; or
 - (h) another vessel to be made available for purposes in connection with repairing, piloting, towing, berthing or securing the maritime casualty; or
 - (i) the movement or removal of another vessel from a place or area where the movement or removal facilitates unloading, receiving, treating, storing or disposing of any of the maritime casualty's cargo.

4.3 Liability and compensation

- 4.3.1 The provisions of Commonwealth and State/Northern Territory legislation relating to geographical scope of application remain applicable in determining liability for pollution damage related to a Place of Refuge request. That legislation may also give effect to the various liability and compensation conventions developed under the aegis of the IMO.

4.4 Indemnity or letter of undertaking

- 4.4.1 Decision makers may have authority to invoke the use of tools such as indemnities and letters of undertaking to address potential costs, liability and compensation associated with the granting of a Place of Refuge request. These costs could range from deployment of marine pollution response equipment to administrative, environmental, socio-economic and cultural costs, as well as operational costs and liabilities incurred within a port if a port is used as a Place of Refuge. Such tools would be negotiated directly between the relevant Commonwealth or State/Northern Territory agency and the vessel's master, owner or insurer, as appropriate. Indemnities and letters of undertaking may be supplemented by financial bonds or guarantees. In seeking an indemnity or letter of undertaking from a vessel owner prior to permitting a maritime casualty to enter port limits following a place of refuge request, the relevant authority should consider whether such an indemnity or letter of undertaking is subject to limitation under a relevant limitation convention. Pro Forma for a Letter of Undertaking is included at Appendix F.
- 4.4.2 Any port, which seeks an indemnity before admitting a maritime casualty, should consider whether:
- the strict liability and significant compensation limits provided by the Civil Liability and Fund Conventions regime offset the need for any such indemnity to cover pollution damage from an oil tanker;
 - the costs of wreck/cargo removal are not subject to liability limits, and whether these items can be subject to negotiation and included in such an indemnity, noting that there may be a need to have some documented basis for the amount requested;
 - as Australia is a signatory to the Convention on Limitation of Liability for Maritime Claims (LLMC) and the Convention is applied in Australian law, the applicable liability limits should be taken into account; and
 - Any port which seeks indemnity before admitting a maritime casualty should consider obtaining security as a relevant factor as per attached Appendix F.
- 4.4.3 A POR can be granted without a letter of indemnity.

5. Amendment process

- 5.1 This Guidance will be reviewed by the Marine Pollution Prevention Technical Group on a five yearly basis, after which any changes should be brought to the attention of the National Plan Strategic Coordination Committee.

6. Appendices

Appendix A: Initial Information to be supplied with a Place of Refuge Request

Appendix B: Guideline for risk-based assessment for a Place of Refuge

Appendix C: Pro Forma for a Directions Notice Issued Under Commonwealth/State/NT intervention Legislation

Appendix D: Step by step Place of Refuge Assessment Guidance

Appendix E: Pro Forma for Transfer and Acceptance of Coordination of Maritime Casualties or request for a Place of Refuge

Appendix F: Pro Forma for a Letter of Undertaking

APPENDIX A

Initial information to be supplied with a place of refuge request

A vessel, agent or salvor requesting a place of refuge should supply the following information to assist in the decision-making process:

Information on the vessel, cargo and passengers	Received Yes/No	Source of Info
Name of vessel		
Flag		
IMO Number		
Tonnage		
Length		
Beam		
Draft (fwd, aft and mid-ships)		
Type of vessel		
Vessel's position		
Course and speed or rate of drift if appropriate		
Vessel's last port of call		
Number and details of crew and passengers on board		
Any casualties on board		
Any suspected diseases or invasive species on board		
Crew's fatigue management plan		
Vessel's communication equipment details		
Status of notifications by the Master		

Operational	Received Yes/No	Source of Info
Full nature of the problem		
Reasons for requesting assistance		
What assistance is required		
Detailed information as to action taken so far		
Proposed plan to manage the casualty		
Is salvor on scene		
Has a contract been entered with a salvor?		
Is a salvor on its way and its ETA		
Traffic density in area of incident		
Closest danger to vessel		
Financial indemnities/letter of indemnity issued		
Weather and local conditions		
Current and tidal condition		
Weather/ wind/swell/clouds		
Twilight/daylight		
Weather forecast		
Distance to place of refuge and ETA		
Safe anchorage areas in the vicinity with good holding ground		

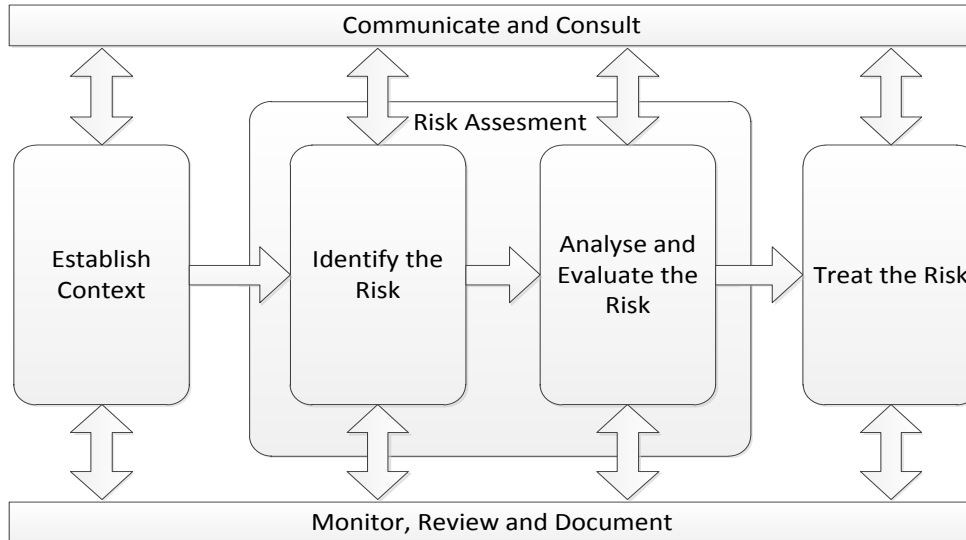
Owners, operators, charterers	Received Yes/No	Source of Info
Name and address of owners		
Name and address of charterers		
Name and address of operators		
ISM company and DPA contact details		
Name and contact details of P&I club		
Name and address of local agent		
Actual pollution or potential for pollution		
Amount of FO/DO on board and location		
Amount of DG on board and location		
Operational status of anchors and steering gear		
Operational status of Main engines and auxiliaries		
Helipad on board		
Equipment on board capable of assisting in stabilising vessel		
Structural integrity of vessel		

APPENDIX B

Guideline for risk-based assessment for a Place of Refuge

Background

The risk assessment should be based on the ISO 31000 process and should be based on taking an “all hazards approach”. Below is a very simple diagram of how the risk assessment process should be approached.



A common method of risk assessment is to convene a panel of experts to brainstorm each risk and obtain a collective perspective. Similarly the expert panel can also look at the adequacy of any proposed control measures and suggest ways to ensure they are integrated into practical actions.

One question often encountered is how far to go with any risk reducing measures. It is most likely that a place of refuge will have to be assigned on the understanding that there will always be some residual level of risk associated with the decision. A reasonable approach is to use a benchmark such as “so far as is reasonably practicable” shortened to SFAIRP. Some basic principles of this approach are:

- First, a risk should be *eliminated* so far as is reasonably practicable, if this is not reasonably practicable, then it should be *reduced* so far as is reasonably practicable.
- Regard should be had to the following matters in determining what is (or was at a particular time) reasonably practicable:
 - a) the likelihood of the hazard or risk concerned eventuating;
 - b) the degree of harm that would result if the hazard or risk eventuated;
 - c) what the person concerned knows, or ought reasonably to know, about the hazard or risk;
 - d) the availability and suitability of ways to eliminate or reduce the hazard or risk;
 - e) the cost of eliminating or reducing the hazard or risk.

Example of risk assessment template and the hazards/ threats that may be considered for risk assessment

Below is an example risk assessment format prefilled with some of the hazards / threats that may be considered. The aim should be to identify and develop management strategies (controls) to mitigate the risks.

Risk and Hazard Register for Place of Refuge

Risk #	Risk Description	Uncontrolled Likelihood	Uncontrolled Consequence	Uncontrolled Risk Rating	Treatment, Mitigations or Controls	Residual Likelihood	Residual Consequence	Residual Risk Rating
	Stakeholder related							
	Adequacy of consultation with local communities							
	Potential conflicts with statutory legislation or regulation and liaison with relevant regulating agencies							
	Contact made with other relevant agencies such as Quarantine and Border Protection for foreign vessels entering an Australian port for the first time.							
	Establishment of sea safety zone							
	Restricting use of sea area and use of air space above by competent authority and how compliance will be monitored							
	Financial indemnities/letter of indemnity issued							
	Financial indemnities/bonds to cover personal injuries							
	Financial indemnities/bonds to cover damages to ports installations, environment and other							
	Financial indemnities/bonds to cover costs associated with environmental/socio-economic and cultural assessments if required and amount to be secured							
	Any requirement under legislation or for commercial/operational reasons to post an adequate bond to cover any risk (pollution, grounding, damage to port facilities, business disruption, etc).							

Risk #	Risk Description	Uncontrolled Likelihood	Uncontrolled Consequence	Uncontrolled Risk Rating	Treatment, Mitigations or Controls	Residual Likelihood	Residual Consequence	Residual Risk Rating
	Location related							
	Effects on all ecological, cultural and socio-economic resources in the area of the location of the casualty							
	Effects on all ecological, cultural and socio-economic resources at the proposed place of refuge							
	Effects on all ecological, cultural and socio-economic resources in transiting to the proposed place of refuge							
	Distance to place of refuge and ETA							
	Type of equipment and facilities available in POR							
	Availability of tugs and other support vessels							
	Availability of fixed wing aircraft and/or helicopters for rescue, surveillance and/or pollution response.							
	Ease of access to place of refuge from air, sea and land							
	Safe anchorage areas in the vicinity with good holding ground.							
	Vessel related							
	Vessel type, configuration and size (e.g. container vessel, tanker or passenger vessel)							
	Vessel self-propulsion capability							
	Vessel stability							
	Vessel self-maneuverability capability							
	Vessel anchoring/berthing capability							
	Structural integrity and effects of any mechanical or structural damage							
	Helipad or feasibility of access by helicopter							
	Availability and reliability of on board equipment to assist in managing casualty (e.g. firefighting, oil and chemical clean up equipment).							

Risk #	Risk Description	Uncontrolled Likelihood	Uncontrolled Consequence	Uncontrolled Risk Rating	Treatment, Mitigations or Controls	Residual Likelihood	Residual Consequence	Residual Risk Rating
	Cargo, crew and passenger related							
	Crew and/or passengers on board							
	Any casualties on board							
	Type, quantity and disposition of all cargo on board, especially dangerous goods and hydrocarbons							
	Condition of all fuel and oil on board							
	Tank locations and integrity							
	Availability of competent qualified and properly rested people on board to manage the casualty.							
	Weather related							
	Current and forecast weather conditions at casualty position							
	Current and forecast weather conditions for transit to place of refuge and at place of refuge for duration of planned stay							
	Current and forecast tides							
	Time of day twilight/daylight/night							
	Operational related							
	Competent, qualified and properly rested people ashore to manage the casualty							
	Potential for lightering vessel at sea							
	Rate of drift							
	Space available for drifting without running into danger							
	Sea room and depth of water when approaching from seaward							
	Measures taken on board to stabilize casualty and for prolonging stay at sea							
	Is salvor on scene?							
	Contract with salvor entered							
	Salvor on its way and ETA							
	Traffic density in area of incident							
	Closest danger to vessel							
	Any vessels capable of assisting in the vicinity							
	Vessels available in neighbouring ports/harbours							
	Availability of a marine pilot to assist in bringing the casualty in							

APPENDIX C

Pro Forma for a Directions Notice Issued Under Commonwealth / State / NT Intervention Legislation

NOTICE UNDER the [Name of Relevant Commonwealth / State / NT Intervention Legislation]

ACT [Year]

[To be printed on relevant Commonwealth / State / NT Maritime agency letterhead]

I, [Insert full name of delegate authorised to issue notice], Delegate of the [Name of relevant Commonwealth / State / NT maritime agency], pursuant to the provisions of Section [Insert relevant section number] of the [Name of Relevant Commonwealth / State / NT Intervention Legislation] Act [Year] hereby direct the owners [Insert full name of owner(s)]; the master, [Name of Master] of the [Insert flag state] flag vessel known as the [Insert name of vessel] (the vessel) having Radio Call Sign [Insert call sign], (and if circumstances warrant, the salvors, [Insert name of salvor]) jointly and severally to comply with the following instructions irrespective of signing a Lloyds Open Form or other similar agreement:

[List instructions: For example:]

1. The [Insert name of vessel] be towed from [Insert name of area or region or location] to a safe anchorage off [Insert name of area or region or location]; or,
2. Prior to departing from the [Insert name of area or region or location] anchorage and continuing its voyage the vessel's owner/master shall supply [Insert name of relevant Commonwealth / State / NT Maritime agency] with a written report from the [Insert name of Classification Society] verifying that the vessel's [Insert nature of problem or incident] meets the requirements of [Insert name of Classification Society] rules.

I further direct that you acknowledge this notice and advise me upon receipt of this notice via the [Insert name of Coastal Radio or Coordination Centre] facsimile number: [+61 Insert fax number] by [Insert time response required] of the action you have taken or propose to take to comply with this notice.

Dated this [Day] of [Month] [Year]

[Signature]

[Name of person authorised to issue Notice]

APPENDIX D

Step by step Place of Refuge Assessment Guidance

Step-by-step process to assist in conducting an assessment for a Place of Refuge	
Reference	CEO Direction - MERCOM Guidelines
Purpose	This guidance should be followed by the agency assessing a request for a Place of Refuge (the control agency).
STEP 1 Receive request	
Receipt of a request	<ul style="list-style-type: none"> A request may be received by a State/NT/Commonwealth agency, a port authority or any third party. The request can be made by the Master, Agent, vessel's owner, salvor or another party that has an interest in the incident. <p>Note: Due to the various channels available for receiving a request for assessment, it is advised that whoever receives such a request follows the steps highlighted in Section 2.5 of the assessment guidance.</p>
STEP 2 Assessing the request	
This step-by-step guide is to be used by the control agency once it has been established as to who is the control agency.	<ul style="list-style-type: none"> Once control has been taken by the assessing authority for a PoR request, they should advise the stakeholders that they intend to conduct a full assessment of the request. Consultation should commence with all stakeholders as soon as possible Gather all the information necessary prior to making the assessment Consider the following: <ul style="list-style-type: none"> convening a panel of experts if necessary to conduct the assessment; assistance available from other stakeholders/agencies; the legal, ecological, environmental and financial impact when assessing the request for a place of refuge; and the ability and/or feasibility of responding to discharges from the vessel Evaluate the options of (i) vessel remaining in current location; (ii) continuing on her voyage; (iii) moving away from shore; (iv) being intentionally scuttled in deep waters; (v) being beached or (vi) moving to a place of refuge while taking into consideration the safety of the vessel and her crew; Evaluate the potential places of refuge and the risks posed to these places If necessary, request that the vessel or owner/insurer contracts with a salvor and/or pollution response contractor Identify the most appropriate action to take, including identifying the most appropriate place of refuge after consultation with the casualty and the relevant shore side stakeholders Keep the media informed of the situation as it evolves Ensure accurate records are kept of the process followed and decisions made.

STEP 3 Notification	
<p>As a minimum, advise the following stakeholders of the decision</p>	<ul style="list-style-type: none"> • The casualty • The State/NT maritime authority • JRCC • MERCOT • The Harbour Master for the port (or nearest port) • The Port Authority • GBRMPA (if necessary) • NOPSEMA (if necessary) • AMOSC (if necessary) • Vessel's agent/owners • Media (from the control agency)
STEP 4 Post assessment	
	<ul style="list-style-type: none"> • Keep monitoring the casualty's progress • Ask authority to activate ETV if deemed necessary • Ask authority to appoint an MCO if deemed necessary • Ask authority to invoke Pol if deemed necessary • Request assistance of salvors if deemed necessary • Take any measures necessary to protect vessel and crew while taking into consideration the environmental, ecological and financial impacts of any decision • Continue liaising and consulting with stakeholders • Keep the authorities informed of the evolving situation
STEP 5 Close off the request	
	<ul style="list-style-type: none"> • Advise all stakeholders that the casualty has been stabilised and is now safe in a place of refuge • Be clear as to which jurisdictions the casualty falls under • Continue to maintain contact with the casualty until resumption of normal business • Once the vessel has resumed normal business (no longer in danger or a danger to the environment), close off the request.

Note: In the event of conflict of opinion when assessing the request, a panel of experts is to determine the best line of action.

APPENDIX E

Pro Forma for Transfer and Acceptance of Coordination for a Maritime Casualty or Place of Refuge Request between Commonwealth / State / NT Agencies

It is hereby agreed that the [NAME OF COMMONWEALTH / STATE / NT AGENCY] transferred coordination for the:

- (a) maritime casualty [SHIP NAME]
- (b) place of refuge request from the [SHIP NAME]

to the [NAME OF COMMONWEALTH / STATE / NT AGENCY] which accepted coordination on [SPECIFY DATE AND TIME].

Signed by:

Name:

Position:

[NAME OF COMMONWEALTH / STATE / NT AGENCY
TRANSFERRING COORDINATION]

Name:

Position:

[NAME OF COMMONWEALTH / STATE / NT AGENCY
TRANSFERRING COORDINATION]

APPENDIX F²

Template

LETTER OF UNDERTAKING BY P&I CLUB IN RELATION TO A SHIP SEEKING ENTRY TO A PLACE OF REFUGE

“[Vessel name]” - Seeking refuge Place of []

1 Background

- 1.1 We, [p&i club], are the liability insurer for “[]” (Ship), registered in [] and owned by [] (Owner).
- 1.2 [incident description]
- 1.3 The Undertaking set out in this letter is provided to [] on the following terms and conditions in consideration for the refuge to be given to the Ship at the Place of [].

2 Undertaking

- 2.1 We warrant that the Ship is not currently under a demise charter.
- 2.2 In consideration of:
 - (1) [] agreeing to the entry into the Place of [], of the Ship []; and
 - (2) [] agreeing not to arrest or detain the Ship or property in the same or associated ownership, management, possession or control, justand upon condition that:
 - (3) such refuge is given; and
 - (4) the Ship or any other property in the same or associated ownership, management, possession or control is not arrested or detained by [],

We Undertake to pay [], within 21 days of receipt by us of written demand from [], such sum or sums agreed to be paid by Owner or us on Owners behalf or awarded by judgement of the court in respect of all losses, damages and liabilities arising from or relating to this incident including:

- (i) removal, destruction or marking of wreckage relating to the Ship;
- (ii) pollution clean-up or pollution prevention expenses relating to pollution emanating from the Ship or resulting from transshipment of the Ship’s cargo;
- (iii) interruption of business of [], including loss of profit from channel port or berth blockage, or the need to keep berths free for passage of the Ship;
- (iv) indirect or consequential loss suffered by [], including liability for third party claims on [] in connection with the provision of refuge to the Ship;
- (v) damage to the wharf or property of [], including port equipment or navigational aids in providing refuge to the Ship;
- (vi) all expenses and costs arising from and relating to [services provided by [] to the ship. [services to be listed depending on the circumstances of the incident].

²Pro forma only

- 2.3 This undertaking is subject to Masters' and Owners right to limit liability in accordance with any applicable international convention.
- 2.4 Our liability under this Undertaking shall be limited in any event to the total aggregate sum of [\$] million,
- 2.5 We agree to make payments under this Undertaking in full without set-off or counterclaim.
- 2.6 This undertaking shall be governed in accordance with the laws of the (Commonwealth/State/NT) of Australia.

Yours faithfully

Signature: _____

Signed by: _____

Date: _____

[P&I Club]

End of document

