

STS in the Singapore OPL – Don't!



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Ship-to-ship (STS) transfer operations at anchor in the outside port limits (OPL) are prohibited, but ships continue to take this risk. This article looks at one example to demonstrate why and how this operation should be avoided.

The case

In 2015, in the course of a long-term time charter, a ship was ordered by its charterer to discharge her cargo of gasoil to another ship by a ship-to-ship (STS) operation at an anchorage in the western outside port limits (OPL) at Singapore. The master refused to do so as he was concerned that an STS in the OPL would be unsafe and was contrary to shipping notices issued by both the Singaporean and Malaysian authorities.

The charterer put a considerable amount of pressure on the master and the owner to proceed with the STS despite the master's reluctance. The owner agreed that the master would carry out a risk assessment. The conclusion of the master following that assessment was still that the operation was dangerous and he refused to go ahead.

The right decision?

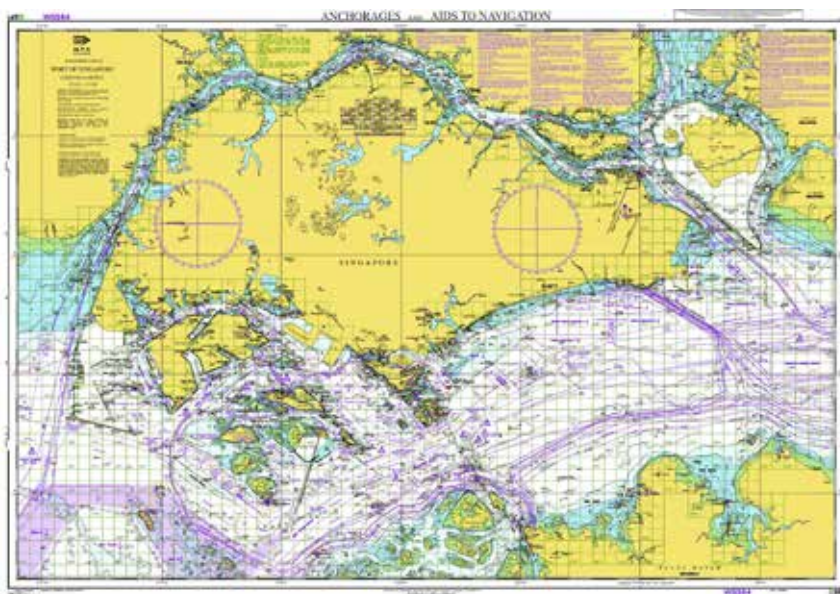
The decision of the master was without doubt the right decision, for the following reasons:

- **There is a high risk of collision in the Singapore OPL.** The OPL are extremely congested because many ships anchor there (for bunkering, taking on supplies, changing crew, repairs or waiting for cargo operations) to save money on pilotage and port charges. The risk created by congestion is compounded by wind and tide. Ships in the OPL are

often swung by the wind and may experience tidal currents of up to 4 knots. Ships engaged in STS operations cannot take evasive action quickly and are more likely to be involved in a collision.

- **It is a criminal offence to anchor a ship in the OPL.** The OPL fall within the territorial waters of Singapore and Malaysia. The Singapore Maritime and Port Authority has issued a circular ([No. 5 of 2001](#)) advising against anchoring within the OPL and the traffic separation scheme. The MPA takes the view that ships doing so are in breach of Rule 10(g) of the *International Regulations for the Prevention of Collisions at Sea* (Colregs) and reports such ships to their flag states. Breach of the Colregs is also a criminal offence and may lead to fines being imposed. Under Malaysian regulations, anchoring within the OPL without permission is prohibited. A ship found anchored there is not only liable to be reported for breach of the Colregs, but she is also liable to be detained and her owner fined.
- **Claims arising out of the operation may not be covered.** A number of P&I clubs have issued circulars warning against the practice of anchoring in the OPL. It is likely that a club would take the view that an STS operation within the OPL is unsafe and would not (without the

STS in the Singapore OPL – Don't! continued



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exercise of the directors' discretion) cover claims arising out of such an operation, such as collision or pollution liabilities or fines imposed.

Refusing charterer's instructions

The charterer claimed that the operation would be safe, pointing out that many STS operations are completed in the OPL without incident. This may well be true. However, this does not mean that the operation will not result in an incident on the next occasion, and the consequences of ignoring the risks are serious.

Refusing to carry out an STS in the OPL is, therefore, advisable. The question then is whether an owner is allowed to refuse instructions to do so from a charterer. If an owner has expressly agreed to an STS in the Singapore OPL, it may be difficult for him to refuse to do so without being in breach of the charterparty. Even so, if the STS operation is illegal in the state in whose waters the operation is ordered, the charterparty or the relevant part of it may be unenforceable.

If the owner has not agreed to an STS operation in the OPL, the legal position is easier. In the case referred to above, the charterparty stated that any STS operation was 'subject to the Master's consent'. As the master did not consent, the owner was not obliged to proceed. Many charters contain similar terms, and from an owner's point of view, such a provision is desirable and should be insisted upon in negotiating the fixture, not just in the context of an STS in the Singapore OPL but in the context of STS operations in general.

Even in the absence of such a term, it is unlikely that a charterer under a time charter can make an owner carry out an STS in the OPL for the following reasons:

- Most time charters require that the charterer nominate only safe ports, berths and places for the ship. An anchorage in the OPL would probably not be held to be safe for an STS operation, especially if it is an anchorage that is specifically prohibited.
- An owner is not obliged to comply with a charterer's order if it would endanger the crew, the ship or the cargo in a manner that the owner has not expressly agreed to. Again, an order to proceed with an STS operation in the OPL would probably be held to be an order to undertake a dangerous operation and would, therefore, not be one the owner was obliged to obey.

Conclusion

It is not clear when, if ever, the problem of STS operations in the Singapore OPL will be resolved. Anchoring in the OPL remains prevalent, despite the state authorities having advised against it, and prohibiting and continuing to take action against owners for it. This is doubtless because of the economic benefits to charterers and owners in doing so. Shipowners would, however, be well advised not to risk the very serious consequences that might result from an attempt to obtain such relatively minor short-term gains.