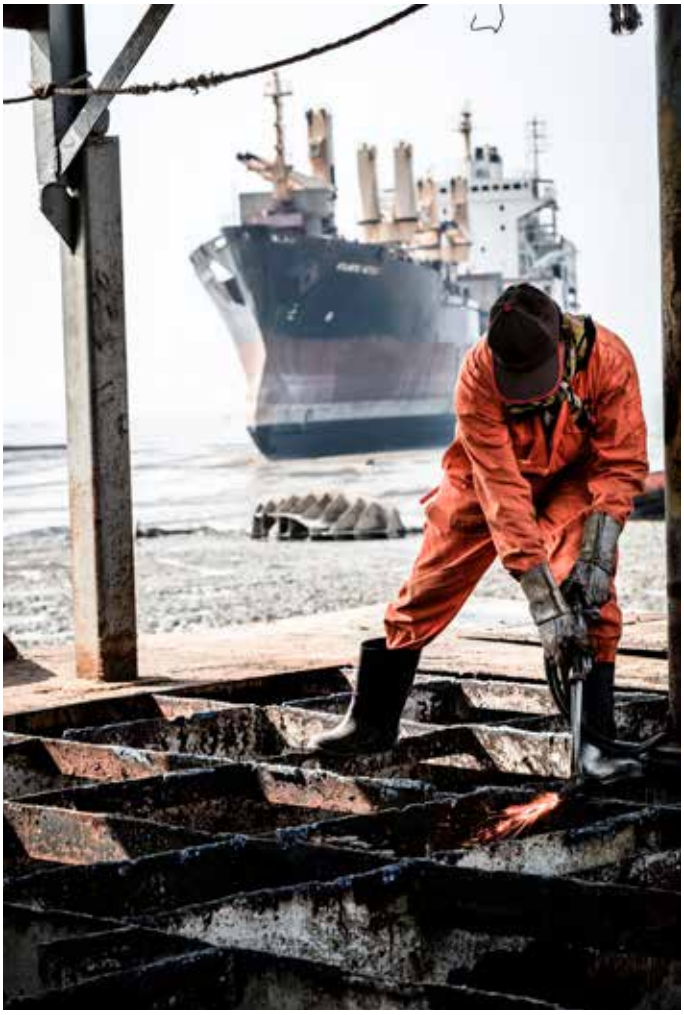
What are the rules around recycling?

Akshat Arora, of the Standard Club, reports on a recent recycling webinar held by the Club, Sea2Cradle and Stephenson Harwood



There have been several high-profile cases where ship operators have suffered reputational and financial damages, because of how their vessels have been recycled at the end of their service. The absence of one international and uniformly applicable convention for the recycling of ships can make this a difficult field to navigate for operators.

Following the launch of a bulletin, "Ship Recycling – Guidelines for devising a strategy in compliance with complex regulatory framework", the Standard Club organised a webinar in cooperation with Sea2Cradle and Stephenson Harwood to discuss the applicable regulations and to provide guidance on the factors that need to be considered when it comes to ship recycling. The following examines key points from the session.

What are the regimes applicable to ship recycling?

The IMO's Hong Kong Convention

International regulations governing recycling are defined in the Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships (the Hong Kong Convention or "HKC"). This Convention was adopted in 2009 but will only enter into force 24 months after it is ratified by 15 states, representing 40 per cent of the world merchant shipping by gross tonnage, and on average 3 per cent of recycling tonnage for the previous 10 years. To date, not all of these conditions have been met, albeit several countries have ratified it and some shipyards comply with it.

On its entry into force, the HKC will be applicable to ships of 500 gt or more engaged in international trade, with an exclusion for warships and ships operating throughout their life only in waters subject to the sovereignty or jurisdiction of the state whose flag the ship is flying. HKC also applies to ship recycling facilities operating under the jurisdiction of a party to the Convention.

UN Basel Convention and its Ban Amendment

The other regulations most relevant in force presently are the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention) regarding transboundary transport of hazardous waste and its Ban Amendment.

The Basel Convention entered into force in 1992 and is aimed to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movement and disposal of hazardous wastes.

The applicability of the Basel Convention to ships sent for recycling rests on three elements:

- end-of-life ships are considered as hazardous waste because they contain toxic components, such as asbestos, lead and mercury;
- they are subjected to transboundary movement; and
- both the state of export and the state of import are parties to the Basel Convention.

Given the global nature of the shipping industry and the practices associated with sending end-of-life ships for recycling, there has been a difficulty in applying the provisions of the Basel Convention to ship recycling.

The Ban Amendment, entered into force on 5 December 2019, prohibits the transportation of hazardous wastes from a country that is part of the Organisation for Economic Cooperation and Development (OECD) to a non-OECD country. It is binding on "Annex VII Parties" (members of OECD, EC and Liechtenstein) that have expressed their consent to be bound by it.

European Union (EU) regulations

The EU unilaterally adopted the Basel Convention and its Ban Amendment into its law in 2006 through Regulation (EC) No 1013/2006, also known as the EU Waste Shipment Regulation (EU-WSR). Additionally, the EU Ship Recycling Regulation (EU-SRR) was adopted in 2013 through Regulation (EU) No 1257/2013 with an aim to facilitate early ratification of the HKC within the EU.

The EU-SRR closely follows the HKC structure, concepts and definitions. Both regulations place responsibility on shipowners, ship builders, suppliers, recycling facilities and

national authorities to ensure the safe and environmentally viable management of hazardous materials as well as the sustainable recycling of ships. A fundamental requirement of these regulations is the documentation of hazardous materials on board ships, the so-called inventory of hazardous materials (IHM), and the authorisation of ship recycling facilities.

What is an IHM and which ships must carry one on board?

Both HKC and EU-SRR regulations require ships of 500 gt and above to carry an IHM, which consists of three parts:

- Part I. Hazardous materials contained in the ship's structure and equipment.
- Part II. Operationally generated wastes.
- Part III. Stores.

Part I is applicable to all ships and shall be kept up to date during the operational life of the ship. Parts II and III are only required to be prepared when a decision is made to send the ship for recycling.

In preparation of an IHM, the standard format according to the IMO guidelines can be used. However, two additional hazardous materials have been added by the EU-SRR, namely perfluorooctane sulfonic acid (PFOS) and brominated flame retardant (HBCDD). As such, if an IHM is developed to cover EU-SRR requirements, then it is recommended to include a reference stating this.

Shipowners are responsible for updating their IHMs based on a Material Declaration (MD) and Supplier Declaration of Conformity (SDoC) for all purchased items that will or could be a part of the ship's structure and fitted equipment – even if they contain no hazardous materials. If any machinery or equipment or component is added, removed or replaced or the hull coating is renewed, the MD/SDoC forms provided by the suppliers shall be properly filed and Part I of the IHM shall be updated. Updating is not required if identical parts or coatings are installed or applied.

How does the IHM compliance fit with wider ship recycling initiatives?

The IHM is the link between the ship's operational phase and its end of life. So, although the IHM may be compiled at build and used for keeping the crew onboard safe from exposure to unnecessary hazards, its primary use comes when a ship is being recycled. The up-to-date information contained in the IHM helps recyclers make critical decisions about methodologies and best practices to employ in order to keep the recycling process as safe and environmentally sound as possible.

It is common that ships will be sold to cash buyers for further recycling. Could there still be a risk for the previous owner in case of non-compliance?

It is common that owners will sell the ship to an intermediary to undertake the recycling. However, this does not mean that owners avoid being in breach of one or more of the applicable regulations, and the owners may also be exposed to reputational or financial damage if targeted by environmentalists.

The consequences of getting it wrong can be very severe and there have been cases demonstrating the heightened risks that companies may face, such as imprisonment or the levy of heavy fines. More recently it has been suggested that there may be an owed duty of care of the original owner to ensure that the ship was safely demolished. Should this be affirmed by the English courts, it may have significant ramifications and put extreme pressure on shipowners to ensure that ships are safely demolished in the future.

Owners should therefore ensure that the third party complies with the applicable regime, and this can be done by including protective clauses in the sale contract. BIMCO has prepared a RECYCLECON form for green ship recycling, which can be considered in such cases.

Does an owner have insurance cover for ship recycling liabilities?

A ship's life cycle can end either due to age or because of catastrophic events and casualties. In the event of a casualty, the ship's future will normally be a matter for the owner to decide and arrange. Usually, P&I Clubs are directly involved in wreck removal operations required by the authorities following a casualty.

"The applicable regulatory regime for scrapping or recycling may impose a significant financial burden on the owner depending on the ship's flag, port of export and port of import"

In broad terms, club cover responds to a member's legal liability for, or incidental to, the raising, removal, destruction, lighting or marking of the wreck of an entered ship.

It may be decided for operational and other reasons that scrapping/recycling is the preferred or most sustainable way forward. The applicable regulatory regime for scrapping or recycling may impose a significant financial burden on the owner depending on the ship's flag, port of export and port of import.

The question may arise as to whether the costs for taking the ship for scrapping and recycling will fall under P&I cover for wreck removal. The answer would most likely depend on whether the relevant costs are considered to be the member's legal liability for, or incidental to, the removal and/or destruction of the wreck.

Scrapping and recycling following a casualty is more of an operational decision for the owner to make with regards to the future of the ship rather than a liability on the owner to remove the ship. On this basis, the costs of recycling are likely to fall outside P&I insurance cover and green recycling insurance products may be necessary.

That said, there may be circumstances where the costs for scrapping and recycling may be considered as liabilities for, or incidental to, the removal and/or destruction of the vessel and thus falling under P&I cover. *MRI*

Akshat Arora

Akshat Arora, senior surveyor at the Standard Club