

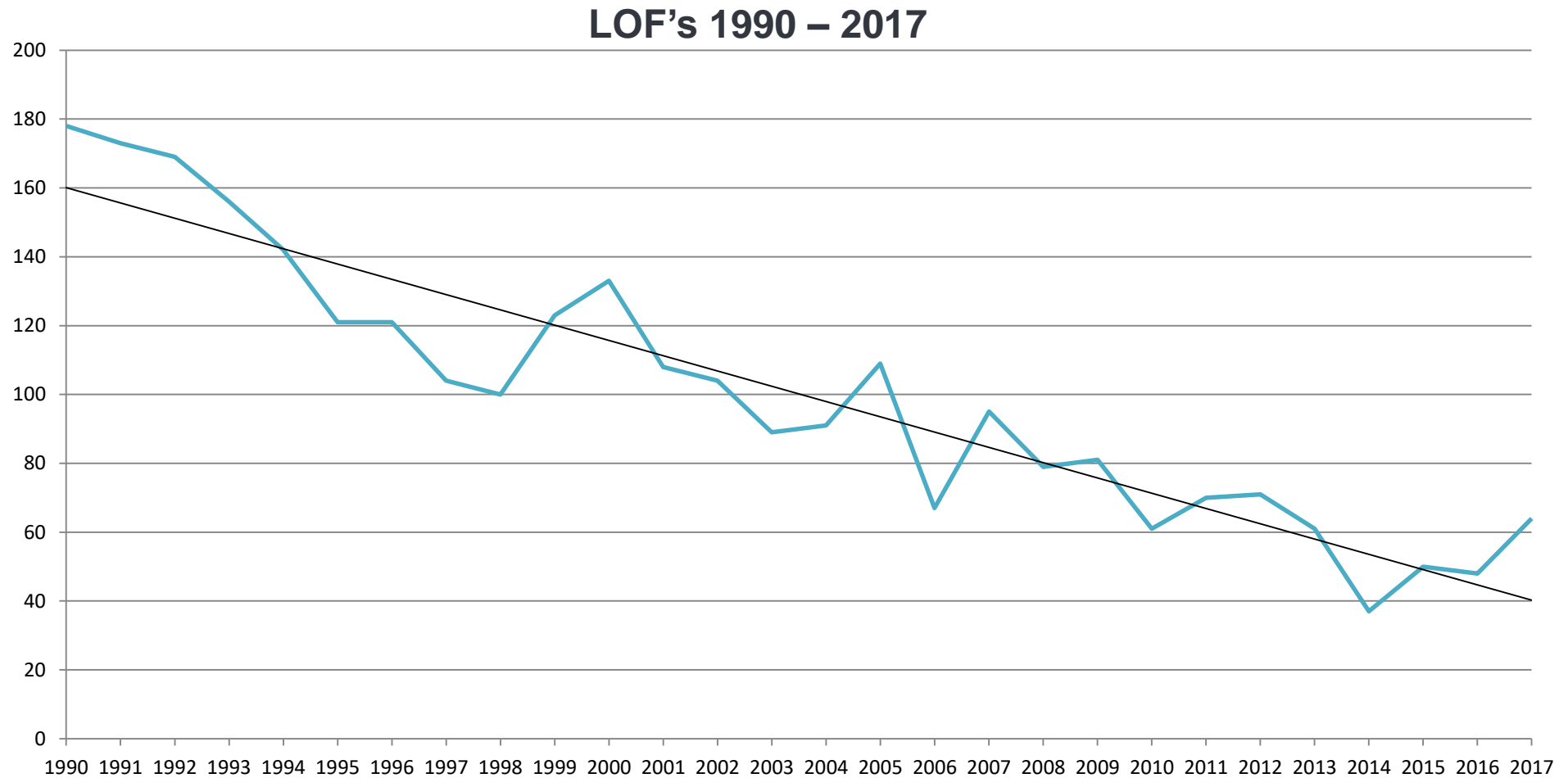
LOF “Light”

An answer to the decline of LOF?

Salvage & Wreck Conference, London – 5 December 2018

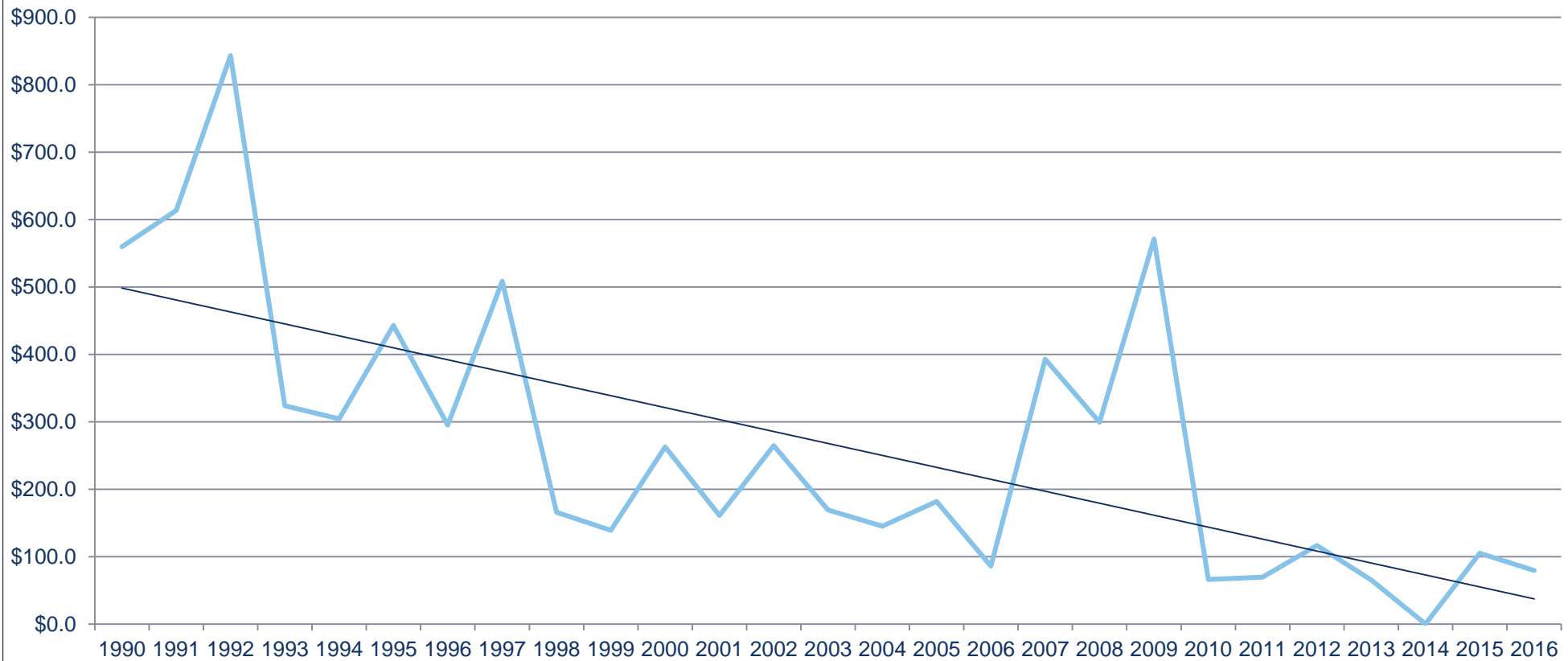
Martin Hall – Head of Marine Casualty, Clyde & Co. LLP

Is the LOF in terminal decline?

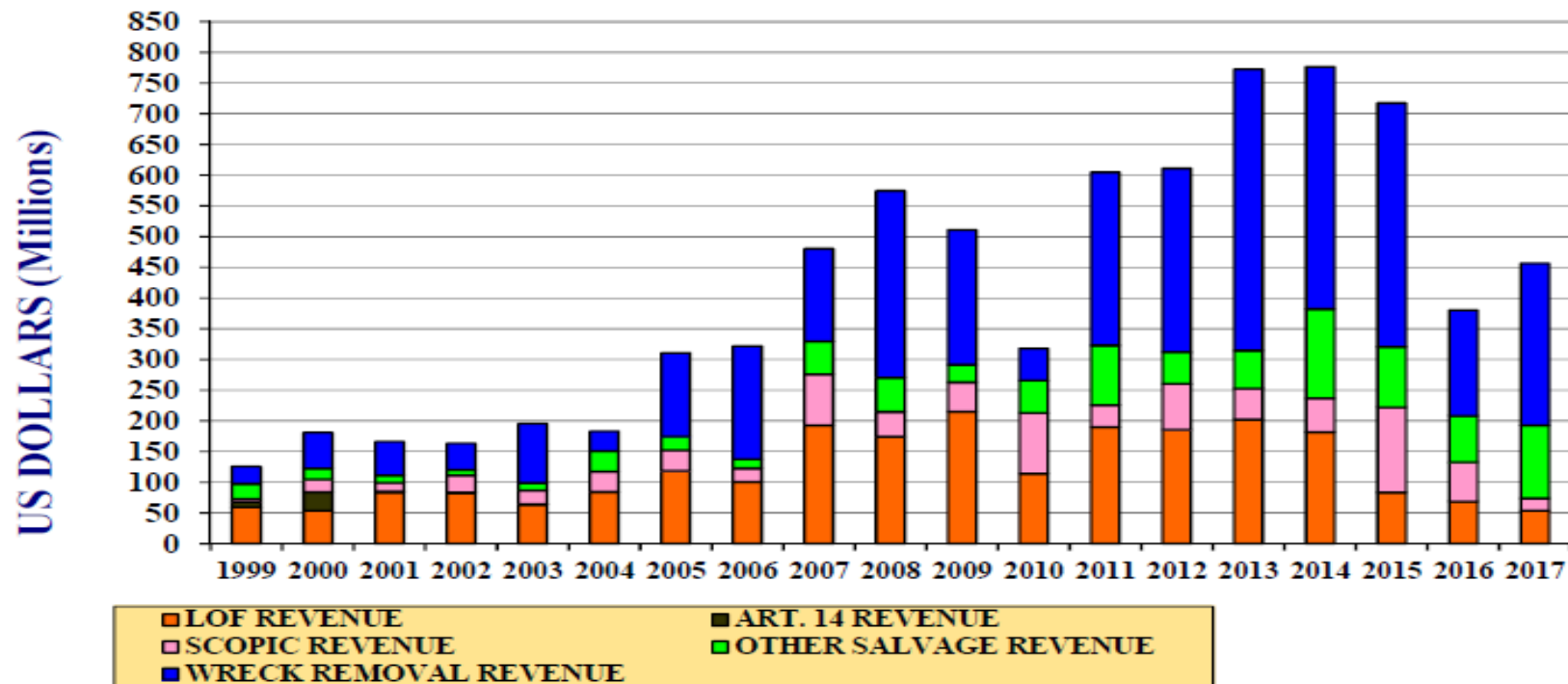


Is the LOF in terminal decline?

Total Value of Awards



Sources of Salvors' Revenue



The Result?

- A decrease in investment; nearly all salvors have now divested most if not all of their station keeping tugs.
- As a result, are arbitrators required to provide as much encouragement (particularly Art 13(i)).
- Increased capacity and therefore competition. Is this healthy or a race to the bottom?
- Is there a tendency to use an alternative arrangement that is more complex and does not result in significant saving?
- Are contracts which were not designed for salvage being used as a best fit with complex legal difficulties being encountered at termination?

Solutions

SALVCON 2018?

- Would achieve salvage at commercial rates?
- Would it be a salvage contract?
- Could it bind Cargo interests?
- Would owners have to pay up front and recover the costs through GA or a salvage indemnity claim?
- Would property underwriters be prepared to fund the costs of that action?
- Would it be too easy for Contractors to walk away if the job was not profitable enough?
- Who takes the risk of them being detained by the authorities on a tariff?
- Does this encourage Contractors to deploy unnecessary resource that is sat idle and they can get paid for.

- Our conclusion was that this is unlikely to be attractive for Owners/Insurers/Contractors

Solutions

Mutual (“Gunn”) Fund

- Salvage “costs” would be paid for by the property underwriters involved.
- The “Encouragement” factor would then be taken from a mutual fund like the ITOPF/IOPC.
- This fund would be funded by payments from the owners/insurers and whatever investment income it managed to accumulate.
- This is not a quick solution and would require IMO legislation to operate.
- Would the wider industry be prepared to fund contractors and how many?
- Whilst possibly the most equitable solution it is the most complex and therefore, unlikely go get much traction.

Solutions

Rescue Tow Clause

- Provides for a commercial rate (plus 25% or 50% uplift) to be independently assessed by brokers.
- The LOF would have similar box on the face of the Form to that which gives the option to invoke SCOPIC.
- Provides for circumstances in which it is fair to revert to a 'clean' LOF, predominantly a "material change in the condition of the vessel or services contemplated at the time of entering into the contract".
- The language deliberately mirrors that in SCOPIC and WRECKFIXED in order to provide some clarity of intention.
- There is a disincentive to Contractors to wrongfully apply to the Arbitrator to revert to the Main Agreement (losing the uplift).

Solutions

Tariff based LOF – LOF “Light”

- Salvage is offered on a tariff based system with a bonus element.
- It is envisaged that the tariffs will be SCOPIC tariffs. Already industry agreed.
- A bonus would then be applied on top to be agreed or subject to the arbitral process (which could be streamlined).
- Property underwriters could have their own representative present to monitor the operation.
- It would give the insurers a greater degree of certainty.
- It would preserve the more attractive parts of the LOF.

LOF “Light” – Box 7

7. Is the Success Fee Clause incorporated into this agreement?
State alternative : Yes/No

Amount of Success Fee increment – []%*

*Percentage of Success Fee increment if agreed to be inserted – see clause M

LOF “Light” - The Bonus

- Bonus to reflect the encouragement factors, dangers, values etc under Article 13.
- Would have to be reasonable. It could not be agreed at zero otherwise the funding issues remain.
- Would the issue of bonus lead to more or less hearings?
- Is it easier to agree to a bonus when the ‘costs’ of the operation are known?
- Salvor gets his tariff rates on termination. Adds cash flow/reduces interest.

LOF “Light” – Clause M

Success Fee Clause:

Unless the word “No” in Box 7 has been deleted this agreement shall be deemed to have been made on the basis that the Success Fee Clause is not incorporated and forms no part of this agreement. If the word “No” is deleted in Box 7, the Contractors' remuneration under this agreement shall be assessed on the following basis:-

- (i) the remuneration shall be calculated on the basis of the Tariff Rates in accordance with clause 5 of the SCOPIC Clause (save only for the bonus as referred to in clause 5(iv)) and Appendix A of the SCOPIC Clause currently in force at the date of this agreement.
- (ii) in addition to the Tariff Rates under M(i) the percentage increment as inserted in Box 7 (as a percentage of the Tariff Rates) shall be added to the total of the Tariff Rates, or if left blank shall, if not agreed, be assessed by arbitration in accordance with clause I hereof.
- (iii) in no case shall the total of the Tariff Rates plus the percentage increment exceed the total value of the property as salvaged.

LOF “Light” – Clause N

Special Representative:

If the Success Fee Clause under Box 7 is incorporated into this agreement, the owners of the vessel, alternatively the owners of the cargo, shall be entitled to appoint a Special Representative, for the benefit of the property, in accordance with Appendix C of the SCOPIC Clause. The costs of the Special Representative shall be borne by the appointee. The Special Representative shall be appointed from the SCR Panel and shall have the same responsibilities and powers as an SCR in accordance with Appendix B of the SCOPIC Clause unless and until the SCOPIC Clause is invoked and an SCR appointed, in which event the SCR will take over.

[NB: Appendix C will need to be amended accordingly].

Conclusions

- The status quo does not work for anybody at present. Things need to change.
- SALVCON has too many seemingly insurmountable difficulties to be attractive to anybody.
- The Mutual Fund is perhaps the most perfect solution but is too complex to be a fix to the immediate problems.
- A Tariff based LOF preserves the better elements of the LOF whilst providing greater certainty to Contractors and Insurers alike.
- Encourages more use of LOF, whilst maintaining funding to salvors.
- Reduces issues as to why LOF signed for the simpler cases.

Feedback?

ISU:

“At the meeting, ISU members were briefed about a new suggestion, the so-called “LOF-light” contract, and agreed that ISU would not support it.

ISU believes that the shipping and insurance industries must - in their own interest - recognize the need to provide sufficient compensation to encourage investment in vessels, equipment, training and the development of highly qualified staff in order to continue to provide an essential global emergency response capability...

President of the ISU, Ms Charo Coll said: “ISU knows well the reality in which its members operate. We don’t want to make radical change but we do want to make sure that the ISU continues to be respected and trusted and that its work reflects the market and modern Salvage.”

Feedback?



Feedback?

ASG:

- Concept needs debate and more education to rebuild trust in LOF.

IG:

- Concern about time in concluding LOF; Possible increase in SCOPIC costs.

H&M:

- Warming to the concept; Provides more certainty.
- Easier to settle the bonus/pay sooner; Reduces conflict with assured.

Cargo:

- Limit bonus?

Owners:

- ???

Feedback?

Clyde's Presentation:

- *“A very well balanced presentation in terms of coverage of a very complex subject and one which could have been and probably will be the subject of much ongoing discussion / debate. Each of the stakeholders clearly set out their respective positions which were nevertheless unaligned in terms how best to address the perceived issues arising from LOF and whether indeed an alternative LOF or similar contract should be introduced.”*
- *“Commercial (cheaper) LOF’s due to the fact that the whole industry including the insurance rates is at the lowest levels since years - direct connection?”*

THANK YOU!

415

Partners

2200

Legal
professionals

3800

Total staff

50+

Offices* worldwide

* Includes associated offices