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Port State Control

(The buck stops here: does it, should it, can it?)

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Port State Control

Introduction

I would like to thank the Maritime Law Association for the opportunity to make this presentation on AMSA's Port State Control (PSC) activities.

First of all I propose to give a brief description of AMSA and how we operate, in particular our port State control activities in Australia. I will also briefly cover AMSA's involvement in the Asia-Pacific region with port State control and conclude with where AMSA sees the "buck" lying for the responsibility of ship safety.

AMSA

The Australian Maritime Safety Authority (AMSA) was established in January 1991 as a government statutory authority. Before 1991 we were the Maritime Operations Division of the Federal Department of Transport. As a self funded government corporation we now have greater flexibility in the management of our affairs, while still being fully accountable to the Minister for Transport, through our Board.

AMSA is responsible for a wide range of maritime services including the development, implementation and oversight of regulatory requirements, the provision of navigation infrastructure, search and rescue arrangements for an area approximately one-ninth's of the world's surface and for management of Australia's national plan to combat pollution.

The structure of AMSA consists of a governing board, a CEO and 6 discrete Business Units (BU) with a total staffing of about 440. Each BU is responsible for its own set of functions and responsibilities. The BU which is most concerned with ship operations and inspection is the "Ship and Personnel Safety Services" (S&PSS) Business Unit.

This unit consists of a Head Office in Canberra and 16 field offices which are strategically located at ports around Australia.

The main role of Head Office is to develop policies, to deal with peak industry bodies and foreign Governments, to promulgate legislation and to provide advice and support to field surveyors, the Department of Transport and to our political masters

Our port offices are mainly concerned with ensuring that Australian regulations and the requirements of international conventions are being implemented and complied with, both in a flag State and a port State role.

AMSA performs several different inspection roles under its charter as the Australian administration responsible for maritime safety and pollution prevention.

The majority of these responsibilities come from Australia's membership of the IMO. Through this membership, Australia has become party to all the major international maritime conventions, such as SOLAS, MARPOL, STCW and the LOAD LINE Conventions. Australia is also party to a number of ILO Conventions.

The inspection roles carried out by AMSA can be broadly categorised as:

1. Flag State responsibilities and
2. Port State responsibilities.

AMSA's Flag State responsibilities are many and varied. They range from overseeing the safe loading, carriage and discharge of cargoes to the annual survey of Australian ships to ensure they comply with international safety and pollution prevention standards.

Port State responsibilities involve the inspection of foreign flag ships which are visiting our ports, to ensure they are neither unseaworthy nor substandard.

In general terms, a vessel is unseaworthy or substandard if the safety of the ship is in question, if it is believed to be a threat to the marine environment or if the welfare of the crew is being compromised.

Australia is an island nation, with some 36,000 kms of coastline to look after: some of this coastline is without doubt among the most spectacular and environmentally sensitive on earth. Not only is the coastline recognised from an environmental viewpoint, it is also important from maritime trade, resource exploitation, tourism, recreation and related perspectives.

Australia's economy depends heavily on maritime trade, particularly for the export of bulk materials such as oil, gas, grain, coal, iron ore and other minerals. In excess of 95% of all maritime cargoes to and from Australia are carried in foreign-flagged ships.

The high value placed by the Australian community on human life and the coastal environment has driven AMSA to implement a strong PSC regime to ensure that the large number of foreign ships trading to Australia are in a satisfactory condition and do not pose a threat to life, property or the environment.

Port State Control - Legal Basis

The right of innocent passage to foreign ships is granted by customary law and by treaty. However, every nation may attach its own conditions to the right of access to its ports. Also, in accordance with international law, each state has the right to exercise control over foreign ships when within its territorial jurisdiction.

In addition to territorial jurisdiction, there is authority to undertake control inspections under a number of International Maritime Conventions adopted by the International Maritime Organization (IMO) and the International Labour Organisation (ILO).

It should be clear that the primary responsibility for ensuring compliance with international conventions rests with the ship owner and the flag State. However, experience has demonstrated that not all ships comply in full with these conventions as many flag States are unable or perhaps unwilling to maintain full and continuous control over ships under their jurisdiction.

As a consequence, an increasing number of countries are exercising their rights to conduct control inspections on foreign ships entering their ports.

The legal basis for AMSA's port State control inspection system is contained in the Navigation Act, the Australian Maritime Safety Authority Act, and Marine Orders. In addition, the marine orders are supported by instruction to surveyors which provide operational guidance to the interpretation of the various inspection provisions.

The Navigation Act contains provisions for the inspection and detention of vessels considered to be unseaworthy or substandard.

In addition to the prescribed powers to inspect and detain ships as contained in the Navigation Act, there are provisions for inspection and detention of foreign ships in various IMO Conventions which are called up in the Navigation Act. These include:

- Safety of Life at Sea (SOLAS 74) Chapter 1, Regulation 19
- Load Line Convention 1966, Article 21
- MARPOL 73/78, Article 5
- Convention on Standards, Certification and training of Seafarers (STCW) 1978, Article X.

These provisions ensure that the port State administration has the authority to inspect and detain a ship until it can proceed on its voyage without danger to the ship or persons on board and without presenting an unacceptable risk to the marine environment.

AMSA's Port State Control Program

Australia has been conducting PSC inspections in one form or other for many years. After observing the success of PSC being implemented by European countries under the Paris MOU, the Australian Government established a more formal structured PSC program in 1985. This program was based on the European model and is the foundation from which AMSA's current PSC regime has evolved.

Since the establishment of the formal PSC program in 1985 a number of events have had a significant influence on the way we conduct control inspections. For example the loss of a number of bulk carriers after loading at Australian ports in the late 1980's and early 1990's led to closer attention being given to the ships structure during inspections of bulk carriers.

PSC Inspections

Control inspections are carried out by AMSA surveyors in accordance with international guidelines which have been produced by the IMO and ILO.

Ships are selected for inspection using a targeting scheme. However the surveyors also use their own judgement and knowledge when deciding whether or not to inspect a ship. In addition ships will be inspected where a complaint is received from an interested party, such as a crew member, or where a report is received that the ship has outstanding deficiencies.

Generally an inspection consists of a surveyor boarding a foreign ship to firstly check that its statutory certificates and documentation is in order and valid. The surveyor then does a brief inspection to check the condition of the ship. This will usually include having the crew operate some of the emergency equipment such as lowering a lifeboat or running the emergency fire pump. This enables the surveyor to make a general assessment of the condition of the ship and its equipment and to assess the ability of the crew to safely operate their vessel.

If during this initial inspection the surveyor comes to the conclusion that the ship could have serious deficiencies then a detailed inspection of the whole ship will be carried out.

Where a detailed inspection is to be carried out, the ships master and if appropriate the classification society are informed and are encouraged to accompany the surveyor during the inspection.

A detailed inspection usually consists of the surveyor, or a team of 2 or 3 surveyors of different disciplines, making a thorough inspection of the ship. When conducting this inspection surveyors are aided by guidelines which are contained in instructions to surveyors and a ship inspection report book. The instructions to surveyors produced by AMSA are based on various IMO resolutions including:

IMO RESOLUTIONS

- A466 and A597** • Procedures for the control of ships, as amended
- MEPC 26/23** • Procedures for the control of ships and discharges under Annex II of MARPOL
- A742** • Procedures for the control of operational requirements related to the safety of ships and pollution prevention:
- A481** • Principles of safe manning:

In addition to the IMO resolutions account is also taken of the annex's to the Asia-Pacific MOU on PSC and the ILO publication "Inspection of Labour Conditions on board Ships: Guidelines for Procedures".

AMSA has produced a ship inspection report book which surveyors use for each ship inspected. This book acts as an aid during the inspection and as a single complete record of the inspection. In addition it contains the various forms that a surveyor uses or could use during an inspection.

If during an inspection a deficiency is found which must be rectified before the ship sails then the ship will be formally detained until the defect is made good. At this time the Master, flag State consul and class society are informed. Normally we require the rectification of defects to be carried out under the supervision of the class society. Whenever a ship is detained a report on the condition of the ship and details of the defects are sent to the IMO, the flag State and the classification society.

In addition to detaining a ship, the master and owner can be prosecuted under Australian law for taking, or allowing the ship to go to sea in an unsafe condition.

The results of all control inspections are recorded on a central database located in Canberra. This database is accessible by all AMSA surveyors through an extensive nation wide computer network and the records are transferred twice a week to the Asia-Pacific MOU database located in Canada

PSC Inspection Results

During 1994, 2406 control inspection were carried out on ships registered in 74 countries. This accounted for 57% of eligible ships visiting Australian ports during the year. Deficiencies on 153 of the ships inspected were sufficiently serious to impair their seaworthiness. These ships were detained until the serious deficiencies were rectified.

During the first nine months of this year AMSA inspected 1904 ships 185 of these were detained for having serious deficiencies.

Asia - Pacific MOU on Port State Control

As a result of the success of the Paris MOU on port State Control and following encouragement by the IMO, through Assembly resolution A.682(17), an agreement, in the form of a memorandum of understanding (MOU), entered into affect between 12 Asia-Pacific countries on 1 April 1994. This regional agreement requires each administration to establish and maintain an effective system of PSC with the aim of ensuring that foreign merchant ships visiting its ports comply with appropriate international convention standards. An annual inspection target rate has been set at 50% of ships operating in the region by the year 2000 and the agreement requires each administration to consult, cooperate and exchange information with the other Administrations in order to implement the aims of the MOU.

The countries whose maritime administration have so far become parties to the MOU are Australia, Canada, China, Hong Kong, Japan, Korea, Malaysia, New Zealand, Papua New Guinea, Russian Federation, Singapore and Vanuata. Indonesia has advised that it will become party to the MOU on 1st April 1996.

To administer the implementation and ongoing operation of the agreement a Committee and Secretariat has been formed. The Committee is composed of a representative of each of the authorities that have adopted the MOU. In addition a number of interested organisations and countries have attended as observers at Committee meetings.

These include the International Maritime Organization (IMO), the International Labour Organisation (ILO) the United Nations Economic and Social Commission of Asia and Pacific (ESCAP), the Secretariat of the Paris MOU, United States Coast Guard, Fiji, Indonesia, Philippines, Solomon Islands, Thailand and Vietnam. The first meeting of the committee was held at Beijing in April 1994 and a secretariat has been established in Tokyo to service the committee.

The committee met for a second time in Kuala Lumpur from 16 to 19 January 1995. Because of the importance of establishing an effective information exchange system a meeting of database managers was held on the two days prior to the committee meeting.

Both the Database Managers meeting and the Committee meeting concentrated on issues concerning the orderly implementation and future operation of the provisions of the MOU. The main outcomes of the meetings included:

- the adoption of rules and procedures of the Committee.
- agreement on the means and method of information exchange
- development of financial reports and budget
- publication of PSC activity in the region
- surveyors manual
- strategy for training of surveyors

The next meeting of the committee will be held in Hong Kong during the first week of December 1995. This will be preceded by a second meeting of the regional database managers on 1 and 2 of December 1995. The following meetings of the Committee and Database Managers are scheduled to be held in New Zealand around the middle of 1996.

Information Exchange

To facilitate the timely exchange of information and details of ship inspections between the members of the Asia-Pacific MOU, a computer database has been established in Canada. AMSA commenced transferring details of its ship inspection to the database in July 1994. Details of AMSA inspections are sent twice a week and information from the database is retrieved as required.

The other countries are at varying stages in the development of their computer facilities. New Zealand MSA is the only other member which is regularly transferring data to the central database in Canada. Hong Kong has conducted successful trials in transferring information but most other countries are still in the process of establishing their national networks.

Surveyor Training

The training of surveyors, to ensure uniform level of inspections, will be critical to the success of the regional MOU. The development of a training program is being progressed by the secretariat with the assistance of the Australian Maritime College which has been contracted to prepare text books and training material. The structure of the training program is very similar to AMSA's own surveyor training program. The majority of training will be done through distance learning with a 3 week classroom component being held in Japan. AMSA provides a surveyor to give lectures on PSC and ILO inspection procedures at the classroom session. It is intended to train 220 surveyors, mainly from developing countries in the region, by the year 2000. 20 surveyors commenced the first course in October this year.

Another important means of developing uniform survey standards throughout the region has been the holding of surveyor seminars. Such seminars enable practicing, experienced surveyors from the different countries to meet and exchange ideas and to be given the opportunity to update and expand their knowledge of current developments. The first Asia-Pacific surveyors seminar was held in Singapore in March this year. AMSA attended that seminar and delivered a lecture on how PSC inspections are done in Australia. The next seminar is scheduled to be held in Bangkok on 14-16 February 1996.

Regional PSC Implementation

The meetings of the MOU Committee have been well attended and delegates to these meetings have shown a genuine commitment to the establishment of an effective PSC regime in the region. However the enthusiasm shown at the meetings is in a number of cases not yet being put into practice through the implementation of effective PSC programs. This is mainly caused through those countries not having the necessary resources and qualified surveyors to establish and maintain a viable maritime safety infrastructure. This could also be the reason why a number of countries in the region have not as yet been able to become a party to the MOU

AMSA is working with the other established maritime authorities, such as New Zealand, to make the regional MOU a success. All members of the MOU agree that the most effective means of eradicating unsafe ships from the region and of protecting the marine environment is to have all coastal States in the region actively cooperating together to operate a well organised and effective Port State control regime.

Such a regime will only develop if AMSA, NZMSA and other similar administrations persevere with the nurturing of the Asia-Pacific MOU. This will require us to assist developing administrations to establish an infrastructure which is able to implement and administer the full range of international conventions and codes in a harmonious and uniform manner, and to have in place a suitable arrangement for exchanging information on ship inspections.

Where Does the Buck Lie

Both AMSA and NZMSA have demonstrated a strong commitment to the eradication of unsafe ships from our ports and from the whole of the Asia-Pacific region. Both organisations have invested extensively in port State control programs, all because of a number of flag States which are unable or unwilling to fulfil their ship safety obligations.

There can be no dispute that the responsibility for ensuring that the condition of a ship complies with the standards specified in the international conventions rests ultimately with the flag State. Even though in practice most flag States have authorised Classification Societies to conduct surveys and issue statutory certificates on their behalf, the flag State is still ultimately responsible..

Whenever AMSA discovers a deficiency on a ship we immediately notify the flag State and the appropriate classification society. Where rectification work is carried out, AMSA always insists that such repairs are done under the supervision of the organisation responsible for issue of the relevant certificate. In this way AMSA ensure that the buck is where it should be, with the flag State or its representative.

AMSA notifies the IMO, flag State and classification society of all details concerning defects found on ships which are detained at Australian ports. When advising the flag State and classification society we seek their confirmation that the ship will comply with international standards before it returns to Australia.

It will be through these measures, the establishment of a strong regional PSC net and through action at the IMO that the number of lax flag States will start to take their ship safety obligations seriously and realise that the "buck" for the safety of their ships belongs with them, not with foreign port States.