



DOUBLING UP ON SURVEYS – FOREIGN V'S LOCAL SURVEYS

BY MARTY LOGAN

As many operators will be aware MNZ has become much more assertive with regard to vessel surveys and the issue of Safe Ship Management (SSM) certificates. I was recently involved in an issue which appears to arise from this new assertiveness as a flag state survey for a fishing vessel was effectively rejected by MNZ, causing significant problems for the New Zealand operators. This is an issue operators of foreign flagged vessels should be aware of as it can lead to drastic consequences.

Given that ships are such a mobile, multi jurisdictional asset, there has always been a certain tension over which set of rules should govern the construction and operation of that vessel, with the options being the laws of the vessel owner (the flag state) or those of the local jurisdiction where the vessel happens to be at any particular time (the port state).

Port state control (PSC) allows the inspection of foreign ships in national ports to verify that the condition of the ship and its equipment complies with the requirements of international regulations. Generally PSC comes into the scene when shipowners, classification societies and flag state administrations have failed to comply with the requirements of the international maritime conventions. Although the ultimate responsibility for implementing conventions is left to the flag states, port states are entitled to control foreign ships visiting their own ports to ensure that any deficiencies found are rectified before they are allowed to sail.

New Zealand is signatory to the Asia and Pacific – Tokyo Memorandum of Understanding (MOU) which is a regional agreement on port state control. The MOU is not legally binding but strives to provide an improved and harmonised system of port state control and of strengthening co-operation and the exchange of information. The MOU recognises that the principal responsibility for the effective application of standards laid down in international instruments, rests upon the flag states while also recognising that effective action by port states may be required to prevent the operation of substandard ships.


However if a vessel habitually operates within the waters of the port jurisdiction then eventually the requirements of the port state take precedent over the flag state. This is reflected in the New Zealand Maritime Rules (21.10(2) for example) which provide that after a foreign fishing ship has operated within New Zealand waters for a period of two years it becomes subject to New Zealand's safe ship management system.

The tension between a port state and a flag state rule has been reduced as a result of many states adopting international conventions relating to vessel construction and operation (i.e. both jurisdictions should be applying the same standards). However, the adoption of international design conventions for fishing vessels has proved problematic because of the huge variety of possible designs. Accordingly fishing vessels have not

been included in the SOLAS Convention. Fishing vessel design has been the subject of the 1977 Torremolinos International Convention for the safety of fishing vessels and the 1993 protocol, but this convention has not been universally adopted and many states have made significant changes to it when incorporating it into their domestic law. In New Zealand it is reflected in Maritime Rule Part 40D which deals with the design of fishing vessels.

The issue at the centre of the matter I had to deal with was the use of doubler plates on a fishing vessel. Doubler plates are used to repair damage, or corrosion, on steel plates. Such repairs are easier and cheaper than permanent welded plate insert repairs. The flag state surveyor, the Korean vessel registry, carried out an extensive survey of the vessel, including examination of the doubler plates. The highly experienced Korean surveyor was satisfied that doubler plates were appropriate and passed the vessel for survey. Shortly after this survey the two year rule was triggered so that the vessel had to be entered into the New Zealand Safe Ship Management System and a New Zealand certificate issued.

It is my understanding that previously New Zealand surveyors would accept the flag state survey on such significant issues as hull integrity, provided the survey was carried out by a reputable registry or class society. However in this case MNZ refused to accept the use of doubler plates therefore refused to issue an SSM certificate. The relevant Maritime Rule is silent on the use of such plates and simply records that the hull must be sound. The international conventions are also silent and therefore the use of these plates is a matter of individual discretion between surveyors. The use of doubler plates is a contentious issue within the surveying community. I understand that there is general acceptance that such plates should only be used for temporary repairs, particularly on the outer plating, but that there is no general consensus about how long a 'temporary' repair can be used. Here the New Zealand charterers found themselves in the very unfortunate situation whereby they had a vessel which was deemed to be legally safe and fit for purpose one day, and then the next day considered to be completely unsafe so that it could not leave port. Given that the vessel had only just passed a rigorous flag state survey the owners were completely caught out by MNZ's position.

The lesson to be learnt by operators of foreign vessels is that if they are going to operate the vessel in New Zealand waters for longer than two years they should not take it for granted that their flag survey will simply be adopted by MNZ. Long before the two year period arises they should take full and frank advice from local surveyors or MNZ on whether the vessel will meet MNZ's standards. If there is an issue with the vessel it may need to take contingency measures sooner than later. 

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